

The Responsibility to Protect: No More Rwandas

The International Community and Humanitarian Intervention in the 21st Century

by

Donald W. Potter

School of Government

Faculty of Arts

Submitted in fulfilment of the requirements

for the degree of

Doctor of Philosophy

University of Tasmania

November, 2006

Statement of originality

This thesis contains no material which has been accepted for the award of any higher degrees or graduate diploma in any tertiary institution. To the best of my knowledge and belief this thesis also contains no material that has been previously published or written by another person, except where due reference has been made.

Donald Wallace Potter

Hobart, 10 November, 2006

Statement of Authority of Access

This thesis may be made available for loan and limited copying in accordance with the *Copyright Act*, 1968.

Donald W Potter

Hobart, 10 November, 2006

School of Government

University of Tasmania

Tasmania

Australia

Acknowledgements

Writing a doctoral thesis is in many ways a solitary task but this work would not have been completed without the support and encouragement of:

My supervisor, Associate Professor Richard Herr who had the good judgment and patience to permit me to find my own feet in the intricacies of international relations. He challenged and inspired me throughout and for this I owe him my gratitude and thanks. But more than that he was a friend and colleague who has made what could have been a daunting task a pleasure. Richard, thank you.

My son, Cameron who was completing a PhD thesis at the same time and understood the sometimes overwhelming and all-consuming task that a thesis can become. His expertise in the intricacies of computers was also invaluable. My other son, Dale, whose irreverent approach to life and love of sport was always there to distract me when I needed a break. My daughter, Kimberley, who was patient when I was distracted and did not give her the attention she deserved.

My wife, Jasmine who first encouraged me to undertake the thesis and then supported me throughout; as she has done throughout the last thirty years and hopefully will do so for many more. She is my rock without whom this undertaking would have lost much of its importance.

Contents

<i>Abstract</i>	<i>vii</i>
<i>Abbreviations</i>	<i>ix</i>
<i>List of Figures</i>	<i>xi</i>
<i>List of Maps</i>	<i>xii</i>
<i>Preface</i>	<i>xiii</i>
Introduction	16
Part One: Theories of Humanitarian Intervention	
Chapter 1. Categorising Fragile and Failed States	38
Chapter 2. Intervention in Fragile and Failed States	56
Chapter 3. Sovereignty	75
Chapter 4. Justifying Humanitarian Intervention	97
Chapter 5. The International Community and Responsibility	121
Part Two: Humanitarian Intervention Case Studies	
Chapter 6 Humanitarian Intervention 1945-91	134
Chapter 7 Somalia, Rwanda and Srebrenica: A Steep Learning Curve?	159
Chapter 8 Sierra Leone and Haiti: Persistence Pays	182
Chapter 9 Kosovo: Illegal but Legitimate ?	202

Chapter 10	East Timor and the Solomon Islands: Non-coercive Intervention	223
Chapter 11	Democratic Republic of the Congo: The Heart of Darkness	248
Chapter 12	Darfur: Never Again, Revisited	265
Chapter 13	Zimbabwe: Why No Intervention?	280
Conclusion		293
Appendix 1.	Failed States Index	308
Appendix 2.	State Capacity Index	313
	Bibliography	322

Abstract

Humanitarian intervention lies at the fault-line in international relations between the principles of international law and state sovereignty (pluralism) on the one hand, and morality and the protection of human rights (solidarism) on the other. Whereas the pluralist international-society theory defines humanitarian intervention as a violation of the cardinal rules of order, it is being challenged by the solidarist view, that seeks to strengthen the legitimacy of the international community by developing its commitment to justice. As a result, a solidarist international community is one in which states accept a moral responsibility to protect the security, not only of their own citizens, but of humanity everywhere.

The humanitarian tragedies in Somalia, Rwanda and Srebrenica in the 1990s and in Darfur currently, have highlighted to the international community the need for the notion of sovereignty to be re-defined, to permit intervention in support of the emerging norm of the responsibility to protect. In the 21st century, a state that violates the fundamental norms of human rights by failing to provide for the safety, security and well-being of its citizens creates a legal and moral burden on the international community to act.

This dissertation contends that the international community has a legal and moral responsibility to intervene to prevent humanitarian emergencies. To test the veracity of this thesis, it was assessed against a number of case studies that span India's intervention into East Pakistan in 1971 to the ongoing crisis in Darfur in 2006. While many aspects of humanitarian intervention remain contentious this dissertation found that there is a trend towards the solidarist approach that is reflected in the emerging international norm of the "responsibility to protect". Further, it confirmed that the most successful interventions involve a range of actors, usually, the United

Nations and/or a regional organisation, backed by a hegemonic power. Finally, it found that a successful humanitarian intervention is dependent upon the international community's commitment to understanding the gravity of the situation at hand and, if necessary, confronting the Westphalian tradition of sovereignty, to provide the appropriate institutional support and resources, and the political will to mobilise that capacity in the face of other priorities and preoccupations.

Abbreviations

AFDL	Alliance des forces Démocratique pour la Libération du Congo
AFRC	Armed Forces Revolutionary Council
ALIR	Armée de Liberation du Rwanda
ASEAN	Association of South East Asian Nations
AU	African Union
CAST	Conflict Assessment System Tool
DPKO	United Nations Department of Peacekeeping Operations
ECOMOG	ECOWAS Observation and Monitoring Group
ECOWAS	Economic Community of West Africans States
FSI	Failed States Index
HDI	Human Development Index
FAR	Forces Armées Rwandaise
FRY	Former Republic Of Yugoslavia
ICISS	The International Commission on Intervention and State Sovereignty
IFM	Istabu Freedom Movement Intergovernmental Organisation
IICK	Independent International Commission on Kosovo
IMF	International Monetary Fund
JEM	Justice and Equality Movement
JMC	Joint Military Committee
KLA	Kosovo Liberation Army
LDK	League for a Democratic Kosovo
LRA	Lord's Resistance Army
MEF	Malaitan Eagle Force
MICIVIH	International Mission in Haiti
MIF	Multinational Interim Force
MINUSTAH	United Nations Stabilisation Mission In Haiti
MNF	United Nations Multi-Nation Force
MONUC	United Nations Mission in the Democratic Republic of the Congo
NATO	North American Treaty Organisation
NGO	Non-Governmental Organisation
NPRC	National Provisional Ruling Council
OAS	Organisation of American States
OAU	Organisation of African Unity
OSCE	Organisation of Security And Co-Operation in Europe
OSCE-KVM	Organisation of Security And Co-Operation in Europe-Kosovo Verification Mission
RAMSI	Regional Assistance Mission in The Solomon Islands

RCD	Rassemblement Congolais pour la Démocratie
RPA	Rwandan Patriotic Army
RGF	Rwandanese Government Forces
RPF	Rwandan Patriot Front
RUF	Revolutionary United Front
SAP	Structural Adjustment Programme
SCI	State Capacity Index
SLA	Sudan Liberation Army
SLA/MM	Sudan Liberation Army/Minni Minawi
SLA/AW	Sudan Liberation Army/Abdel Wahid
SLA	Sierra Leone Army
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNDP	United Nations Development Programme
UNMIH	United Nations Mission in Haiti
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNITAF	Unified Task Force forming Operation Restore Hope
UNLF	Ugandan National Liberation Front
UNMIK	United Nations Mission In Kosovo
UNAMSIL	United Nations Mission in Sierra Leone
UNOMSIL	United Nations Observer Mission In Sierra Leone
UNOSOM	United Nations Operations In Somalia
UNSC	United Nations Security Council

List of Figures

Figure 1. The Instability Framework	45
Figure 2. The Scope of State Functions	47
Figure 3. Responsible Sovereignty Matrix	88

List of Maps

Map 1.	India/Pakistan/Bangladesh	137
Map 2.	Vietnam and Cambodia	143
Map 3.	Tanzania and Uganda	148
Map 4.	Somalia	162
Map 5.	Rwanda	168
Map 6.	Bosnia and Herzegovina (Srebrenica)	178
Map 7.	Sierra Leone	185
Map 8.	Haiti	192
Map 9.	Southwestern Herzegovina (Kosovo)	206
Map 10.	East Timor	226
Map 11.	Solomon Islands	239
Map 12.	Democratic Republic of the Congo	251
Map 13.	Sudan	267
Map 14.	Zimbabwe	282
Map 15.	Failed States Index – 2005	310
Map 16.	Failed States Index – 2006	312

Preface

On October 3, 1993, attack helicopters dropped elite US soldiers into the centre of Mogadishu, Somalia; their mission, to abduct several top lieutenants of the Somali warlord Mohamed Farrah Aidid and return to base. However, the mission went horribly wrong and by the time the troops returned two Black Hawk attack helicopters were shot down, 18 US troops were dead and seventy-three wounded. The Somali toll was far worse with over five hundred dead including many women and children. This was not what the US envisioned when it joined a UN intervention in December 1992 to help avert widespread starvation.¹ Indeed, when the UN force left in 1995 it had failed to achieve its mission.

On April 6, 1994, President Juvénal Habyarimana of Rwanda was returning home from a conference in Tanzania when his Falcon executive jet was shot down as it was approaching Kigali airport to land. Within hours a genocide began. All over Rwanda the *Interhamwe*, a militia group supported and supplied by the Hutu dominated Rwandan government, began to kill not only Tutsis but also any Hutus that opposed this action. The government controlled radio kept calling for all good Hutus to kill the *inyenzi*, the “cockroaches”, who were polluting the Rwandan nation and preventing it from living in peace. The killing continued until rebel Tutsi forces (the Rwandan Patriotic Front) entered Rwanda from Uganda and seized control of all but the south-western part of the country. By the time the killing stopped over 800,000 men, women and children had been massacred.²

¹ Mark Bowden, "Blackhawk Down; an American War Story," *Philadelphia Enquirer*, November 16 1997.

² David Rieff, *At the Point of a Gun: Democratic Dreams and Armed Intervention* (New York: Simon & Schuster, 2005), 71.

On July 11, 1995, a year after the Tutsi rebels finally halted the Rwandan genocide, Bosnian Serb forces overran the UN defences and seized control of the safe area of Srebrenica, which contained 40,000 Muslim men, women and children. Over the course of the following week, the commander of the Bosnian Serb army, Ratko Mladic, separated the men and boys of Srebrenica from the women. He announced on Bosnian Serb television, “ finally, after the rebuilding of the Dahijas, the time has come to take revenge on the [Muslims] in this region”.³ All told, some 7000 Muslim men and boys were killed, the largest massacre in Europe since the Nazi atrocities in WWII.

The debacle of the intervention in Somalia, the disastrously inadequate response to the genocide in Rwanda, and the utter inability of the UN presence to prevent murderous ethnic cleansing in Srebrenica highlights the debate about the “right of humanitarian intervention” and in particular the question of when, if ever, it is appropriate for states to take coercive action, including, if necessary, military action against another state to protect people at risk in that other state. None of these cases were handled well by the international community. Even when intervention did occur it was often too little, or too late, or misconceived, or poorly resourced or poorly executed or a combination of these.

The UN Secretary-General Kofi Annan posed the issue in this way: “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda.....to gross and systemic violations of human rights that affect every precept of our common humanity?”⁴ Additionally, there is general acceptance by most states that there must be no more Rwandas; never again can the international

³ Samantha Power, *“A Problem from Hell” America and the Age of Genocide* (London: Flamingo, 2003), 392.

⁴ Gareth Evans, *Banishing the Rwanda Nightmare: The Responsibility to Protect* (2004) available from; www.pbs.org/wgbh/pages/frontline/shows/ghosts/etc/protect.html. (Accessed 30 October 2005).

community stand by in the face of gross breaches of human rights. The question was, how is this to be achieved?

Introduction

Not many people are talking about humanitarian intervention any more, and probably not many new PhDs are being started on the subject - unlike the 1990s, when it was the hottest topic on the international relations academic circuit. But the issue has not been resolved, and will not go away. It is only a matter of time before reports emerge again from somewhere in the world, as they did over and over again in the 1990s, of massacres or mass starvation, or rape or ethnic cleansing, occurring or apprehended.....And then the question will arise all over again in the Security Council and in political capitals and in the media –what do we do? This time around we must have the answers.⁵

At the beginning of the 21st century humanitarian intervention is in a state of flux. There is a general consensus that never again should be the international community stand by in the face of gross breaches of human rights as occurred in Somalia, Rwanda and Srebrenica in the 1990s. But ten years later the crisis in the Darfur province of the Sudan has demonstrated that although the international community has responded in some positive, albeit limited way, it has still not developed an adequate manner of dealing with humanitarian emergencies. However, events such as Rwanda and Darfur are having a defining effect on the international community in a way that previous humanitarian disasters such as Armenia in 1915 have not done. The international community today is actively seeking solutions to the dilemma of humanitarian intervention in relation to the doctrine of non-intervention into sovereign states.

Humanitarian intervention as a concept remains contentious, in part because of the debate over terrorism and the invasion of Iraq in 2003. Many states are suspicious that humanitarian intervention is merely a rationalisation by

⁵ Gareth Evans, "The Responsibility to Protect and September 11" (paper presented at the UNU/Canadian Government Seminar on the Responsibility to Protect, 2006). Available from <http://www.crisisgroup.org/home/index.cfm?id=2281&f=1> (Accessed 5 July 2006).

major powers for strategic interventions.⁶ Nevertheless, there are indications that the international community is moving towards a new set of norms governing humanitarian intervention. The United Nations Summit of Leaders in September 2005 endorsed the International Commission on Intervention and State Sovereignty (ICISS) report, *The Responsibility to Protect*, whose most significant contribution to the debate was to reconceptualise the core concept of “the right to intervene” as rather “the responsibility to protect” in cases where a state is unable or unwilling to protect its citizens. Additionally, the African Union has become the first multinational organisation to incorporate into its charter the collective right to intervene in conflicts to protect civilians in humanitarian emergencies.⁷ Additionally, this concept has been utilised by some regional organisations in Africa, such as the Economic Community of West African States (ECOWAS) who have actually intervened in member states based on this principle.⁸ Furthermore, NATO has been subject to mounting pressure to assist in large-scale humanitarian missions around the world rather than to exist as just a European defence association.

By changing the terms of the humanitarian intervention debate, the responsibility to protect as a concept, has, according to Evans, four major advantages.⁹ Firstly, it focuses the issue on the perspective of those needing support rather than on those intervening. Secondly, it recognises that the primary responsibility for the security and well-being of a state's citizens rests with the state concerned, and it is only when a state is unwilling or unable to fulfil the responsibility to protect that intervention is warranted.

⁶ For example the United States intervention into Guatemala in the 1980s and 1990s was viewed suspiciously by the members of the Organisation of American States and effected their attitudes towards the subsequent interventions in Haiti (see Chapter 8).

⁷ See the Constitutive Act of the African Union. Available from; http://www.au2002.gov.za/docs/key_oau/au_act.htm (Accessed 25 June 2005).

⁸ In particular Liberia and Sierra Leone. See Chapter 8 for more details of these interventions.

⁹ Gareth Evans, “The Responsibility to Protect and September 11”.

Thirdly, to 'protect' implies more than to 'intervene': it incorporates not just a responsibility to react but to rebuild as well, and brings to the forefront the issue of "state-building".¹⁰ Finally, the new language helps to clarify and redirect the policy debate so that all parties are forced to think afresh about the real issues.¹¹

The responsibility to protect broaches three major issues. Firstly, as the responsibility to protect also incorporates a responsibility to prevent and to rebuild, the crucial requirement of any intervention is to identify states which are failing their responsibilities to provide for the security and well-being of their citizens. In previous eras, states have been classified according to power, but humanitarian intervention requires an alternative method. Since the end of the Cold War there has been considerable debate on the issue of state fragility and failure, and classification based on this criterion (that is, the ability of a state to be able to provide for the security and well-being of its citizens) provides one means of identifying states in need of assistance.

Secondly, there is a shift in the concept of state sovereignty. In the report of the ICISS, it was argued that sovereignty should be seen not as control but as responsibility. This highlights the disparity between the norms that arose from the Peace of Westphalia, which emphasised respect for state sovereignty and non-intervention, and developing state practice which increasingly places a high value on human rights. In other words it exposes the conflict between control versus responsibility at an internal level, and order versus justice at an international level.¹²

¹⁰ State-building is not synonymous with the older concept of "nation-building". Chapter 2 addresses this issue in more detail.

¹¹ Evans, "The Responsibility to Protect and September 11".

¹² Ibid. and Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 11.

Finally, it requires a mechanism to legitimise interventions by the international community. The ICISS recommended that justifications for humanitarian interventions be based on a modified version of the Just War tradition. For an intervention to be legitimate it would require that there is a just cause, the right intention, last resort, proportionate means, reasonable prospects and authorisation by the United Nations.¹³

International Relations Theory and Humanitarian Intervention

Humanitarian intervention can be addressed from several different points of view that are reflected in a range of international relations theories. Two that inform the chapters to follow originate in the English School; the three traditions and the pluralist versus solidarist debate.¹⁴ Additionally, aspects of the positivist versus liberal perspectives of international law are touched upon.

The Three Traditions

At the centre of Martin Wight's theory of the three traditions was the debate amongst three groups of thinkers: the Machiavellians, the Grotians and the Kantians, or as he also referred to them the realists, the rationalists and the revolutionists.¹⁵

For the realists there is no international society and international relations exists in a state of anarchy, a war of all against all or a relationship of pure conflict among sovereign states. What purports to be international society, the system of international law, diplomacy or the United Nations is fictitious

¹³ "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty," (Ottawa: International Development Research Centre for ICISS, 2001).

¹⁴ See Martin Wight, *International Theory: The Three Traditions* (Leicester: Leicester University Press, 1991). and Alex J Bellamy, "Humanitarian Intervention and the Three Traditions," *Global Security* 17, no. 1 (2003).

¹⁵ Wight, *International Theory: The Three Traditions*, xi.

and each state exists to pursue its own interest in an anarchic system. The question of morality in international relations does not arise.¹⁶

On the other hand, the rationalists observe international relations not as international anarchy but as an intercourse between states, where there is not only conflict but also cooperation. Rationalist argue that states, although not subject to a common superior, nevertheless form an international society whose workings can be observed in institutions and that, in their dealings with one and other, states are not free of moral and legal restraints.¹⁷

The revolutionists reject both the realist and the rationalist view that international relations is about conflict among states, or a mixture of conflict and co-operation among states, and argue that it is not about the relations among states at all, but about relations among the human beings of which states are composed. The revolutionists appeal to international morality which they understand to be the imperative that requires all men to work for a common brotherhood in a world society.¹⁸

Using Wight's conception of the "three traditions" can provide important perspectives from which humanitarian intervention can be analysed. It identifies three different ways of thinking about, and responding to, the concept and practices of humanitarian intervention and recognises that each tradition has its own theoretical and practical approaches to the issue.¹⁹ As each of the three traditions are engaged in a perpetual dialogue between and amongst each other, differences in intervention and state practice will arise because of the often contradictory perceived responsibility that states have to

¹⁶ Ibid.

¹⁷ Ibid., xii.

¹⁸ Ibid.

¹⁹ Bellamy, "Humanitarian Intervention and the Three Traditions.", 9.

their own citizens (realism), to international society (rationalism), and to humanity (revolutionism).²⁰

As realism's world views and practices are based on a Hobbesian worldview, its *raison d'état* is the provision of the security and well-being to the citizens of the state, which can only be achieved if the state itself survives and, therefore, the realist tradition cautions against humanitarian intervention. It tends to produce instrumental objections to humanitarian intervention that are reflected in a debate in domestic politics, which focuses on the lives of the military that intervenes, rather than the predicament of those in danger.²¹ In practice, realist state leaders tend to place the national interest ahead of humanitarian concerns.

Rationalism is located on a spectrum somewhere between realism and revolutionism and is based on the understanding that there is a natural harmony of interests between people and that states can assist their mutual existence and prosperity by agreeing to a set of rules to which all can conform.²² Therefore, the rationalist view of humanitarian intervention is very different to the realist one. Although, in general, rationalists are opposed to intervention, they do agree that in certain circumstances it may be legitimate particularly when authorised by the UN Security Council.

However, at least until recently, the more common rationalist point of view was that any act of intervention is an affront to the basic rule of non-intervention on which the preservation of order and the continuation of social life depends.²³ This was reflected by Robert Jackson who noted that, "in my view, the stability of international society, especially the unity of great powers, is more important, indeed far more important, than minority rights

²⁰ Ibid.

²¹ Ibid., 11.

²² Ibid.

²³ Ibid.

and humanitarian protections in Yugoslavia or any other state - if we have to choose between these two sets values".²⁴

A major problem that arises in the discussion of rationalism and humanitarian intervention is the question of cultural relativism. States have a right to determine their own social values and culture free from outside intervention.²⁵ Indeed, it could be argued that this is implied in the "right to self-determination" which is in accordance with the purposes and principles of the Charter of the United Nations, and spelt out in Article 1 of the International Covenant on Civil and Political Rights

Additionally, some argue that it is impossible to separate human rights from the cultural context in which they emerge and this is particularly seen in the so-called "Asian values" debate, in which Asian states argued that their societies prioritise the rights of the group over those of the individual.²⁶ Rationalists overcome this problem to a certain extent, by restricting humanitarian intervention to cases of supreme humanitarian emergency.²⁷ Nevertheless, there remains amongst the rationalists a deep reluctance to break the non-intervention rule.²⁸ Whereas rationalists insist that moral values arise from the society in the state in which they exist, revolutionists believe in a moral universalism.²⁹

The revolutionists advocacy of the existence of an agreement on what constitutes a supreme humanitarian intervention, a right of intervention, and

²⁴ Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), 291.

²⁵ Bellamy, "Humanitarian Intervention and the Three Traditions." 12.

²⁶ Chris Brown, "Universal Human Rights: A Critique," in *Human Rights in Global Politics*, ed. T. Dunne and N. J. Wheeler (Cambridge: Cambridge University Press, 1999). See also Mohammed Ayoob, "Humanitarian Intervention and International Society," *Global Governance* 7 (2001).

²⁷ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 34.

²⁸ Bellamy, "Humanitarian Intervention and the Three Traditions." 13.

²⁹ Wight, *International Theory: The Three Traditions*, 8.

common principles for guiding that intervention, relies on two principal arguments. Firstly, states should be required to satisfy a certain basic requirements of decency before they qualify for sovereign protection which the principle of non-intervention provides.³⁰ While there is general agreement about the existence of a floor of decent behaviour the problem is identifying where that law is. Stanley Hoffmann argues that the problem with a rights-based approach to international society is that formal rights tend to be far in advance of state practice.³¹ However, for the revolutionists it is important that there is agreement about the existence of a floor of decent behaviour as this lies at the heart of their belief.

Secondly, the revolutionists argue that the protection of human rights has an equal status in international law with the protection of sovereign rights.³² Revolutionists make a case that this equality is derived from the United Nations Charter, which in addition to governing the principle of non-intervention under Article 2(4), also recognises that the protection of fundamental human rights is important in the Preamble and Article 1(3) of the Charter. Further, they maintain that state practice has produced a precedence leading to a customary right of intervention. Finally, they contend that, in addition to a legal right to act in the time of supreme humanitarian emergency, there is also a moral obligation to act.³³

Each of the three traditions can be identified in the theory and practice of humanitarian intervention. As the realist tradition questions the validity of a universal, it emphasises the state's primary responsibility to its own citizens and is sceptical about humanitarian intervention. Rationalists emphasise the

³⁰ R. J. Vincent and P. Wilson, "Beyond Non-Intervention," in *Political Theory, International Relations and the Ethics of Intervention*, ed. I. Forbes and S. Hoffman (Basingstoke: Macmillan, 1993), 125.

³¹ Quoted In Bellamy, "Humanitarian Intervention and the Three Traditions." 14.

³² *Ibid.*, 15.

³³ T. Franck and N. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Force," *American Journal of International Law* 67, no. 2 (1973).

norm of non-intervention and see humanitarian intervention as a challenge to it. However, while questioning the legality of humanitarian intervention rationalists are developing institutions and laws that allow interventions in the cases of supreme humanitarian emergencies. Finally, revolutionists emphasise the responsibility to protect people in peril, whenever and wherever they may live. It insists that there is a common agreement about the basic law of humane governance and insist that state practice shows that there is an emerging consensus in support of humanitarian intervention.

It is important to remember that Wight argued that each of these traditions were engaged in a permanent conversation with each other, and that neither is right or wrong and none is able to claim dominance over the others. It is the existence of this dialogue that helps to explain the inconsistencies in the practice and rhetoric of humanitarian intervention.³⁴ Additionally, each of these traditions is both intellectual, in that it informs academic debate about international norms, and practical, in that it reflects competing public approaches to humanitarian intervention.³⁵

The Pluralism–Solidarism Debate

Three concepts that are analogous with Wight's three traditions of international relations, are the English School's theories of: international system, international society and world society.³⁶ These three concepts relate to realism, rationalism and revolutionism in a similar way to the three traditions, in that international system is about power politics among states; international society relates to the institutionalisation of shared interests and identities among states; and world society places individuals, non-state

³⁴ Bellamy, "Humanitarian Intervention and the Three Traditions." 17.

³⁵ Ibid.

³⁶ Richard Little, "Neorealism and the English School: A Methodological, Ontological and Theoretical Reassessment," *European Journal of International Relations* 1, no. 1 (1995), 15-16.

organisations and the global population at the focus of global societal identities and arrangements.³⁷

When considering the pluralism/solidarism debate it is possible to see it as related to international society and world society respectively. However, when considering the pluralism/solidarism debate from a humanitarian intervention viewpoint it is more beneficial to adopt the English school's international society approach, as that reflects the world as it is, and not as how the revolutionists would prefer it. In this approach, pluralist international society's theory defines humanitarian intervention as a violation of the cardinal rules of sovereignty, non-intervention and non-use of force.³⁸ On the other hand, a solidarist international society-view looks to strengthen the legitimacy of international society by increasing its commitment to justice.³⁹ The tension between these two positions raises some interesting issues.

If the pluralist approach is accepted that a Kantian world society of homogeneous democratic states is not likely in the short term, then the question that arises is, to what extent can the norms, rules and institutions of an international society be formed to allow humanitarian intervention without departing from the foundational rules of sovereignty and non-intervention that define it as a society of states. Pluralist conceptions lean to the realist side of rationalism, in that they are strongly state centric and the understanding that international law is positive law, that is, only made by states. Therefore, they take it as granted that states are the key factor and dominant unit of human society and that state sovereignty is given legal and political primacy. Moreover, pluralism is about upholding that the political

³⁷ Barry Buzan, "Rethinking the Solidarist -- Pluralist Debate in English School Theory" (paper presented at the ISA Panel' Solidarity in Anarchy: Advancing Their New English Schools Agenda', New Orleans, March 2002), 2.

³⁸ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 11.

³⁹ Ibid.

and cultural differences and distinctness that are the legacy of human history.⁴⁰

On the other hand, solidarist conceptions lean toward the Kantian or revolutionary side of rationalism in which a universalism underpins a society of states and contributes to the survival of international order. Solidarists assume that there is a potential for international society to embrace shared norms, rules and institutions about functional cooperation over such things as limitations on the use of force, and acceptable “standards of civilisation” with regard to the relationship between states and citizens (that is, human rights).⁴¹ The solidarist position highlights the rights of individuals within international society and, therefore, they are drawn to natural law, where individuals have independent standing. Additionally, their position is both normative in that it drives what states should do, and what norms should become part of international society, and empirical in that it examines what states do, and what norms are becoming part of international society.⁴²

In summary, pluralists focus on how the rules of international society provide for international order and focus on states, not individuals, as the principal bearers of rights and duties in international law. This position is being challenged, at least in respect to humanitarian intervention, by the solidarist viewpoint which looks to strengthen the legitimacy of international society by deepening its commitment to human rights.⁴³ It is this conflict between order and justice that highlights the dichotomy between the pluralist and solidarist approaches.

⁴⁰Buzan, "Rethinking the Solidarist -- Pluralist Debate in English School Theory", 4.

⁴¹ Ibid.

⁴² Barry Buzan, *From International to World Society?* (Cambridge: Cambridge University Press, 2004).

⁴³ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 17.

International Law

Just as the pluralist/solidarist debate on humanitarian intervention highlights the conflict between order and justice so does the debate between the positive and liberal approaches to international law as reflected by academic legal scholars such as Simon Chesterman and Fernando Tesón.⁴⁴ Chesterman's position on humanitarian intervention is clear. As Article 2(4) of the Charter of the United Nations clearly prohibits the use of force, with exceptions only for self defence and enforcement actions authorised by the Security Council⁴⁵, therefore, humanitarian intervention is illegal unless authorised by the United Nations Security Council.⁴⁶ Tesón, on the other hand, regards this conception of international law as mistaken and believes that an alternative conception of international law operates to meet the needs of citizens; not their governments. Legal rules and processes should be interpreted in the light of human values, not state values.⁴⁷

To Chesterman the emergence of the modern doctrine of non-intervention was closely connected to the rise of positivism in international law. He observes that the origins of humanitarian intervention are located in the tension between the belief in the justice of a war waged against an immoral enemy, as put forward by Hugo Grotius (1583-1645), and the emerging principle of non-intervention, as a element of sovereignty arising out of the Peace of Westphalia in 1648.⁴⁸ The first commentator to advocate for a

⁴⁴ Simon Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), Fernando Tesón, *A Philosophy of International Law* (Boulder, Colorado: Westview Press, 1998).

⁴⁵ Under the Uniting for Peace resolutions the General Assembly may make recommendations relating to the maintenance of international peace and security to members or the Security Council under Article 11 of the UN Charter.

⁴⁶ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*, 1.

⁴⁷ Fernando Tesón, "Defending International Law" (paper presented at the ASIL Centennial Discussion on a Just World Under Law: Why Obey International Law?, University of Baltimore School of Law, 2006), 1.

⁴⁸ Jennifer M Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society," *Global Governance* 8, no. 4 (2002), 505.

proscription against intervention appears to be the German philosopher Christian Wolf (1679-1754). Wolf argued that a punitive war is only legal when waged by a state that has itself received a severe injury and where no other course of action is available to it.⁴⁹ This position was reinforced by Emmerich de Vattel (1714-1767) who similarly adopted the basic premise that domestic jurisdiction is unchallengeable:

the duties of a nation towards itself are of purely national concern, and no foreign power has any right to interfere otherwise than by its good offices, unless it be requested to do so or be led to do so by special reasons. To intermeddle in the domestic affairs of another nation or to undertake to constrain its councils is to do it an injury.⁵⁰

Chesterman argues that by the early 20th century, the Vattelians had won out over the Grotians, and that intervention could not be justified as a defence of the rights of the oppressed in other jurisdictions against their sovereign.⁵¹

International law, as originally conceived by Hugo Grotius, was based less in legal doctrine than it was in a body of principles rooted in the laws of nature and in his text *De jure belli ac pacis*, presented an outline of the practice and authority of the *jus belli* (just war) concept.⁵² Tesón adopts a similar approach in that he argues for a more liberal theory of international law that privileges custom over a treaty. In particular he contends that, as liberal theory is committed to “normative individualism”, then the primary normative unit is the individual not the state.⁵³ Further, the theory rests on the assumption that the purpose of states and governments is to protect and secure the rights of its citizens and, therefore, the purpose of international law must be to

⁴⁹ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*, 17.

⁵⁰ Quoted in *Ibid.*, 18.

⁵¹ *Ibid.*, 42.

⁵² *Ibid.*, 9.

⁵³ Tesón, *A Philosophy of International Law*, 1

benefit, serve and protect human beings; not states or governments.⁵⁴ In this way the notion of sovereignty is redefined. The sovereignty of the state is dependent upon the state's domestic legitimacy and, consequently, international justice must be in harmony with the principles of internal justice.⁵⁵

Chesterman in *Just War or Just Peace*, challenges three contemporary arguments in favour of a right of humanitarian intervention as supported by scholars like the Tesón.⁵⁶ It has been suggested by liberal legal scholars that there is a loophole in Article 2(4) of the UN charter that would support the use of force for humanitarian purposes. In the first instance, it is claimed that humanitarian intervention would not contravene the charter if it did not violate the "territorial integrity or political independence of the target state".⁵⁷ In the second case, it is considered that humanitarian intervention is not contrary to the purposes of the UN charter if the objectives related to human rights and freedom listed in Article 1(3) are taken into account.⁵⁸ Chesterman rejects these arguments on "restrictionist" grounds and asserts that interventions for the purposes of humanitarianism or democracy building are not a legal exception to the ban on the use of force.⁵⁹ To the suggestion by scholars like Tesón, that there is an emerging customary law on humanitarian intervention, Chesterman notes that the problem with such

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*.

⁵⁷ Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society." 505.

⁵⁸ Ibid.

⁵⁹ Ibid. and also see Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*. 40-47 for a summary of the debate between "restrictionists" and "counter-restrictionists" over the meaning of Article 2(4) of the UN Charter.

an approach is that it privileges custom over a treaty which is controversial from the perspective of the Vienna convention.⁶⁰

In summary, positivist approaches to international law strongly uphold the principles of sovereignty and non-intervention and reject the right of humanitarian intervention unless authorised by the United Nations. On the other hand, the liberal theory of international law rests on the assumption that the purpose of states and governments is to protect and secure the rights of its citizens and, therefore, the purpose of international law must be to benefit, serve and protect human beings; not states or governments. While the positivist approach to international law reflects the stance of the majority of international legal scholars, the very nature of humanitarian intervention assures that the liberal standpoint is integral to the debate on what action is justifiable in the event of an humanitarian emergency.

The discipline that dominates studies of humanitarian intervention is international law, and any work addressing the subject must draw heavily from that body of work. However, as the discussion of Chesterman's and Tesón's work demonstrates, there is considerable debate even within international law as to the legality of humanitarian intervention. Additionally, international relations theory can add considerable depth to the analysis of humanitarian intervention and provide insights not provided by international law. By utilising approaches from both disciplines it is possible to highlight the conflict between actions that may be moral but not legal.⁶¹

⁶⁰ Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society.", 506.

⁶¹ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 4.

Toward an Assessment of Theory and Practice

This dissertation sets out to develop a framework to assess the thesis that the international community has a responsibility to intervene to prevent humanitarian emergencies in states who are either unwilling or unable to fulfil their responsibility to provide for the security and well-being of their citizens. This dissertation addresses this line of reasoning by identifying and probing several sub-theses contained within it.

The first of these is the belief that states have a responsibility to provide for the security and well-being of their citizens. It is contended in Chapter 1 that it is possible to identify empirically those states who fail to do so. Quantitative indicators can measure state strength based on the capacity of the state to provide political, economic and social goods and services to its citizens. Additionally, states who failed to meet their responsibility to provide security to their citizens can be evaluated by measuring their vulnerability to violent internal conflict. The resulting indices may provide a basis for categorising fragile and failed states. Arguably such indices can be employed to determine which states require intervention by the international community in support of “the responsibility to protect”.

The second sub-thesis meets the Realist challenge to humanitarian intervention. Chapter 2 shows a reconceptualisation of the classical definition of humanitarian intervention is able to provide for a range of options, from cooperative, non-military intervention through coercive non-military intervention to forcible military intervention, depending on the circumstances of the state. It is argued that this reconceptualisation highlights the dichotomy between forcible and non-forcible elements of the debate and avoids the all or nothing approach of the classical definition, thereby allowing for more nuanced choices of humanitarian interventions. A

greater range of options makes intervention more practicable and thus more useful.

The third sub-thesis to be considered holds that, because fragile and failed states fail to meet their external and internal sovereign responsibilities and undermine the principle of sovereignty based on absolute authority as established by the Peace of Westphalia, the concept of sovereignty in the 21st century is better conceptualised as a variable, that entails the capacity of the state to meet its responsibilities and exercise its authority, both internally and externally. Chapter 3 demonstrates that a conception of “responsible sovereignty” is possible which enables state sovereignty to be analysed, taking account of both the traditional Westphalian norms and current international law.

The fourth sub-thesis pursues the solidarist position to contend that humanitarian intervention in the 21st century is both legally and morally justifiable in cases of humanitarian emergencies.⁶² A humanitarian emergency requires an urgent response. Chapter 4 acknowledges that the UN Charter is the principal convention governing the legality of intervention under international law and that humanitarian intervention is permissible when authorised under Chapter VII of the Charter. However, it also recognises that a case can be made for the fact that a new international customary norm of humanitarian intervention has been created as a result of state practice. Three moral justifications for humanitarian interventions are put forward. First, Natural Law, which when separated from its religious connotations, can be seen as common morality and indeed is reflected in the values such as those defined by the United Nations Declaration of Human Rights which specify that a major purpose of states and governments is to protect and secure human rights. Second, it is maintained that the Just War

⁶² A humanitarian emergency raises questions of timeliness. A humanitarian emergency is a sudden event that requires an urgent response from the international community.

tradition, as further developed by both the International Commission on Intervention and State Sovereignty and the UN in its report, *In Larger Freedom*, provides a method of justifying intervention in cases of humanitarian emergencies. This line of reasoning is further developed in Chapter 5 where it is argued that the responsibility to protect is an emerging norm in international relations. Finally it is proposed that an intervention could be legitimate, even if apparently illegal, if the human rights norms that have been developed over the last fifty years are recognised.⁶³ It contends that this is best accomplished by embracing the Solidarist Theory of Legitimate Humanitarian Intervention which is a variation of the just war tradition developed above which relies on only four criteria: just cause (best regarded as a supreme humanitarian emergency), last resort, a proportional use of force, and a high probability of obtaining a positive humanitarian outcome.

The final sub-thesis is a variation of the theme developed in Chapter 2. It is argued that a humanitarian intervention has a greater probability for success when a hegemonic power (either international or regional) acts in concert with the United Nations and/or a regional organisation. The reasons for this improved circumstance are analysed in the case studies offered in Part Two of the dissertation.

Testing the Theory

A total of twenty cases of intervention or non-intervention, in eight groups, are researched and analysed in Part Two of the dissertation. Each group of case studies relates to one or more of the sub-theses raised above and provides a basis for assessing the veracity of the those propositions.

⁶³ This also can assist in overcoming the timeliness problem of an 'emergency'.

Chapter 6 examines three interventions in the 1970s: India's invasion of East Pakistan (now Bangladesh) in 1971, Vietnam's incursion into Cambodia in 1978, and Tanzania's intervention in Uganda in 1979. Although both India and Tanzania pointed out the humanitarian benefits of their interventions, none of the three sought to use humanitarian intervention as a justification for their invasions of a neighbouring country. In retrospect some analysts have viewed these actions as a precedent supporting the legality of humanitarian intervention in appropriate cases.⁶⁴ The importance of examining these Cold War cases is that it provides a basis for the comparative analysis of post-Cold War cases of interventions and demonstrates the growing tendency of governments to invoke humanitarian intervention justifications to legitimate their use of force.

Chapter 7 analyses three United Nations interventions that ended in failure. In the case of Somalia the result was a collapsed state; in Rwanda and Srebrenica (Bosnia) the failure was in not preventing crimes against humanity, ethnic cleansing and genocide. After each occasion the international community said "never again" but to date its actions have not measured up to its rhetoric.

On the other hand, Chapter 8 assesses the interventions into Sierra Leone between 1996 and 2004 and Haiti between 1994 and 2006. At various times the intervention into Sierra Leone have involved the United Nations, the Economic Community of West African States, and the United Kingdom, and with the finalisation of the UN presence in 2006 it has been judged largely successful although Sierra Leone remains a desperately poor state. Haiti has had a troubled past for most of its existence and has been the subject of two interventions between 1991 and 2004 by the United Nations, the Organisation of American States, France and the US. The inauguration of a

⁶⁴ Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Dobbs Ferry: Transnational Publishers, 1988).

new president in May 2006 has provided a window of opportunity for Haiti to move beyond political polarisation, crime and economic decline. A defining factor in each of these interventions was the involvement of a hegemonic power.

Chapter 9 examines one of what might be the most important interventions of the post-cold War era, that of NATO into the Serbian province of Kosovo. NATO leaders defended this “humanitarian war” as necessary, just, proportionate and effective, but carried out the action unilaterally without the authorisation of the United Nations. As a result, many states considered the war to be illegal, but a subsequent commission found that, although the intervention may have been illegal, it was legitimate. This question of legality versus legitimacy is a crucial element in the humanitarian intervention debate especially with regard to timely intervention.

Chapter 10 highlights two examples of cooperative intervention. The first in 1999, involving the then Indonesian province of East Timor came about when Indonesia cooperated with an intervention by an Australian-led UN force to stop widespread human rights abuses which eventually led to the independence of a new state now known as East Timor. The second occurred in 2003 when Australia responded to a request from the Prime Minister of the Solomon Islands for assistance in restoring law and order to his troubled island. Both have been subject to renewed security problems in 2006 which has led to further interventions and have highlighted the difficulties of state-building in fragile and failed states.

Chapter 11 looks at the case of the Democratic Republic of the Congo. This troubled country was wracked by strife throughout the 1990s, as a result of internal battles for power but where the protagonists were backed by various external sources. It is estimated that over two and a half million people were

killed either directly or indirectly during this period. The UN authorised a UN force to monitor a ceasefire in 2000 but this is a case where a humanitarian intervention is unlikely to succeed because it lacks the resources to do so. It highlights the problem of a fragile, possibly failed, state where the central government has no control over its outer regions, that is, its sovereignty has been compromised. Additionally, it reinforces the proposal that intervention is unlikely to be successful without the involvement of a hegemonic power.

Chapter 12 investigates the case of Darfur. Despite cries of “never again” after Rwanda, Darfur has demonstrated that the international community is still unable to respond, in a timely way, to supreme humanitarian emergencies or, as this case may be, genocide. The conflict began in February, 2003 and it was not until May, 2006 that a tentative settlement was reached. Even now it may be another six months before an United Nation’s intervention is implemented to ensure an end to the killing. This case study examines the reasons behind these failures.

The case of Zimbabwe is explored in Chapter 13. Despite widespread human rights abuses, there has not only been no intervention but also little discussion about it. Zimbabwe is not an isolated example. Many states in the world today do not meet even a minimum standard of human rights and this raises the question as to what the threshold should be for the international community to take humanitarian action. This chapter explores the relevance of an emerging norm to intervene in the context of the mushy threshold of where this duty might begin.

The concluding chapter of this dissertation brings together the theses developed in Part One of the dissertation with the case studies in Part Two and reflects on whether in the 21st century, humanitarian intervention has

achieved a new legitimacy that reflects a more solidarist approach. It concludes that there is an emerging norm of “the responsibility to protect” that is gaining greater acceptance by the international community. It is triggered in response to supreme humanitarian emergencies but requires the humanitarian intervention to be UN authorised.

Categorising Fragile and Failed States

If it is accepted that states have a responsibility to provide political goods and services to their citizens, that is, security, health and education, economic opportunity, good governance, law and order, and fundamental infrastructure requirements (transport and communications), then states fail when they are no longer have the capacity to fulfil these responsibilities. A major problem in dealing with failing or failed states is in defining exactly who and what they are. State failure need not be reserved for cases of complete state collapse, either into civil war or anarchy but can also be understood as a process involving the weakening of a state's capacity to meet its functions. Taking this further, it may be beneficial to consider state failure as a spectrum which ranges from weak or failing states, through failed states, to collapsed or non-states. In this case a failed state is one that meets a specific set of conditions and excludes states that only meet some of the criteria which can then be classed as weak or failing states depending on the extent of their decline.

There is no single agreed definition of state failure. Failure can be manifested in coups or other illegal or unpredictable transfers of power; in the breakdown of political, economic and social institutions; systemic corruption and organised crime; loss of territorial control or large scale public unrest; and violent internal or external conflict.⁶⁵ It is important that the international community understand the causes and dynamics of state failure as this could assist in developing empirical tools that will enable failing

⁶⁵ *Investing in Prevention an International Strategy to Manage Risks of Instability and Improve Crisis Response*. (A Prime Minister's Strategy Unit Report to the Government, 2005. Available from http://www.strategy.gov.uk/downloads/work_areas/countries_at_risk/cris_report.pdf. (Accessed 1 August, 2005).

states to be identified quantitatively.⁶⁶ One of the more promising developments in this direction is that by the British Prime Minister's Strategy Unit has developed a model that maps the risks of instability that lead to failure by looking at the interaction of three sets of factors:

- A country's internal capacity and resilience (e.g. strong state capacity and legitimacy, strong civil society);
- Underlying factors associated with instability (e.g. poverty, presence of natural resources, bad regional neighbourhood);
- External stabilisers (e.g. international security guarantees, membership of international institutions).⁶⁷

Based on an understanding developed from the above model this chapter utilises two indices to assist in identifying and defining weak, failing and failed states. The first is the State Capacity Index where states are measured empirically based on quantitative indicators that measure their capacity to provide political, economic and social functions to its citizens.⁶⁸ The second is the Failed States Index which uses several social, political and military indications to assess a range of states in order to establish their vulnerability to violent internal conflict.⁶⁹

Ultimately, for these indices to be of benefit, they must assist in identifying states that are indeed weak, failing or failed. Therefore, this chapter will also examine a range of states identified by the indices to assess the utility of these indices in enabling the international community to determine which states no longer meet their sovereign obligations and may need support or intervention.

⁶⁶ Indices to categorise state capacity and state failure are developed later in the chapter.

⁶⁷ Ibid.

⁶⁸ See page 43 and Appendix Two.

⁶⁹ "The Failed States Index," *Foreign Policy* 149, no. July/August (2005).

Defining the Risk of Instability and State Failure

One of the first problems in dealing with failed states is in defining exactly what they are. Several definitions have been developed by scholars in the field such as the following:

- Robert I. Rotberg notes that failed states are tense, deeply conflicted, dangerous, and bitterly contested by warring factions⁷⁰;
- Robert H. Jackson sees failed states as states which cannot or will not safeguard minimal civil conditions, i.e. peace, order, security, etc. domestically⁷¹;
- Hans-Joachim Spanger argues that failed states can be defined in terms of the demise of governmental functions that are considered standard for an internationally recognised state⁷² ;
- William J. Olson suggests that the list of failed states could be expanded if one were to include states facing serious “internal problems that threaten their continued coherence or significant internal challenges to their political order.”⁷³
- Ralph Peters, while not actually defining a failed state as such, notes that globalisation demands conformity to the practices of the global leaders. In addition to the traditional indicators of failure he notes that new predictive tools have emerged which are based in culture. These indicators are the restrictions on the free flow of information, the subjugation of women, the inability to accept responsibility for individual or collective failure, the extended family or clan as the basic

⁷⁰ Robert I Rothberg, "The New Nature of Nation-State Failure." *The Washington Quarterly* Vol 25 No 3, 2002, 85-96.

⁷¹ Robert H. Jackson. "Surrogate Sovereignty? Great Power Responsibility and Failed States" *Institute of International Relations*, The University of British Columbia, 1998, 2.

⁷² Hans -Joachim Spanger. "Failed State or Failed Concept? Objections and Suggestions" *Peace Research Institute*, Frankfurt,2000. Available from http://www.ippu.purdue.edu/failed_states/2000/papers/spanger.html (Accessed 27 September, 2003)

⁷³ William J. Olson, "The New World Disorder: Governability and Development." in Max G. Manwaring, ed. *Gray Area Phenomena: Confronting New World Disorder*, Boulder: Westview Press, 1993.

unit of social organisation, the domination by a restrictive religion, the low valuation of education, and the low prestige assigned to work.⁷⁴

One of the problems of these definitions is that they concentrate almost exclusively on the extreme cases of state failure. Carment argues that state-failure is a process of relative decay and that states can be placed along a "development continuum" and characterised as "strong, weak, failed and collapsed".⁷⁵ Gros places states along a continuum beginning with those states that meet the classical Weberian criteria of statehood and ending with those that met none of these criteria of successful statehood.⁷⁶

Dorff noted that one concept of state failure had its conceptual roots in the works of Hobbes, Locke and Rousseau.⁷⁷ Viewed from this perspective the authority of the state is dependent upon the consent of the governed to accept that authority and the rules that go along with it. Moreover, the relationship is two-pronged in that the citizens agree to accept that authority and legitimacy and agree to abide by the rules, while the state accepts the responsibility to deliver certain political goods and services (health, education, security and so on). In a weak state, failure occurs when the state is no longer able to meet its responsibilities to its citizens. Such cases may arise from insurgencies or civil wars as in Liberia and Sierra Leone, war-lordism as in Somalia, or the general breakdown of government as in Haiti.⁷⁸ However, there are also cases where the failure of a state comes, not from states with too little power, but from states with too much power and leaders

⁷⁴ Peters, Ralph. "Seven Signs of Non-Competitive States." *Parameters*, US Army War College Quarterly (Spring 1998), 36-47.

⁷⁵ David Carment, "Assessing State Failure: Implications for Theory and Policy," *Third World Quarterly* 24, no. 3 (2003), 409.

⁷⁶ Jean-Germain Gros, "Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Liberia, Rwanda and Haiti," *Third World Quarterly* 17, no. 3 (1996), 457.

⁷⁷ Robert H. Dorff, "Failed States after 9/11: What Did We Know and What Have We Learned?," *International Studies Perspectives* 6 (2005), 22.

⁷⁸ Ibid.

who opt to misuse that power, as in the kleptocratic rule of Sese Seko Mobutu in the Congo.⁷⁹

From the foregoing it can be seen that the critical element of failure is the erosion or loss of legitimacy of the state because of its ineffectiveness in providing to its citizens the political goods and services for which it is responsible, either through a weakening of state capacity, or because the state power is used unjustly to oppress those citizens.⁸⁰ Additionally, state failure should be regarded as a gradation or continuum, which ranges from weak states through failed states to collapsed states. In this case a failed state is one that meets a specific set of conditions and excludes states that only meet some of the criteria, which can then be classed as weak or failing states depending on the extent of their decline. A collapsed state is an extreme version of a failed state where there is a total vacuum of authority.

Only a few of the world's states can be described as failed or collapsed but, there are many dozens more that are better described as weak or failing, and possible candidates for total failure. The distinction between weak and failing states is rarely clear in practice, therefore, for clarity in this thesis they are combined and will be characterised as "fragile states".⁸¹ Although the above assists in understanding and defining state failure what is required in reality, is a method of identifying and ranking fragile and failed states especially if this is to be applied to an intervention strategy.

⁷⁹ Ibid.

⁸⁰ The unwillingness of a state to provide for the protection of its citizens creates problems when determining whether a humanitarian intervention is justifiable or not as autocratic regimes differ significantly. State failure due to inability or incompetence is different from failing due to being a corrupt, "evil" state. Therefore, this thesis concentrates on interventions that occur due to a lack of state capacity with the possible exception of Kosovo (which was not an independent state) and which, as will be examined in Chapter 9 was in many ways a watershed in the history of humanitarian intervention.

⁸¹ USAID also uses this term but includes failed states within the definition. See www.usaid.gov/policy/2005_fragile_states.htm

Identifying Fragile and Failed States

While all states are unique and require specific analysis, there are certain risk factors associated with weakness, instability and failure that can be used to assist in identifying state failure. The recent report by the British Prime Minister's Strategy Unit, provides a framework in which the complex factors and relationships that feed instability, conflict and failure can be analysed.⁸² The study introduces an "Instability Framework" model, based on a systems control model with inputs, outputs and feedbacks. It details the risk factors for instability both inside and outside a country, the shocks that can send a country spiralling into conflict, and external stabilising factors, all of which can impact upon a country's capacity to avoid failure.⁸³ Briefly the framework relies on three factors; country capacity and resilience, risk factors for instability, and external stabilizing factors.

Country capacity and resilience lies at the centre of a country's stability and determines the extent to which a country can successfully manage risk factors, potential shocks, and the degree to which it can take advantage of external stabilisers. It is comprised of four main elements. First, state capacity which is the ability of the state to deliver key functions to its population including security, a legal and economic framework, public goods (e.g. infrastructure, health, education) and protecting the rights of citizens. Second, constraints on state power which are the institutions that provide checks and balances on the state executive that ensure that internal political and economic tensions are managed in a reasonable and predictable manner. Third, civil society which is the network of traditional, religious and other interest groups that operate at a level below the state and which can increase

⁸² *Investing in Prevention an International Strategy to Manage Risks of Instability and Improve Crisis Response.*

⁸³ Ibid.

a state's capacity and resilience by insisting that the state lives up to its obligations, and by providing key services. Finally, the social contract is the agreement between the state and its citizens that details the rights and responsibilities of each.⁸⁴

The risk factors for instability can be either internal or external. Internal factors include low gross domestic product per capita, economic decline, a history of internal conflict, natural resource dependency, horizontal inequality, rapidly growing and urbanizing populations, and an epidemic level of HIV/AIDS. External factors that can affect stability include bad regional neighbourhoods, geopolitical competition for scarce resources, organised crime or terror networks. Additionally, it is anticipated that climate change will increase instability in many parts of the world.

Despite this impressive list of risk factors for instability, there are external stabilizing factors that help provide resilience and over time help build capacity to manage the risks of instability and failure. These include security guarantees (both bilateral and multilateral), strong political relationships with other countries and regional groupings, and a supportive external economic environment incorporating open external markets, access to high quality foreign direct investment and remittances from diaspora communities (Figure 1). The typology developed by the Prime Minister's Strategy Unit provides an understanding of some of the factors that create instability in individual states.⁸⁵

Based on an understanding of these factors it is possible to develop further tools to empirically identify and classify fragile and failed states.

⁸⁴Ibid.

⁸⁵ The State Failure Task Force also developed a method of attempting to identify potential state failure by analysing ethnic wars leading to collapse or partial state failure between 1955 and 1994. Three factors became apparent from their work: failure was more likely when a state preferred a closed economic system, when infant mortality rates (a proxy measure for a state's social well-being) were high, and when a state was undemocratic.

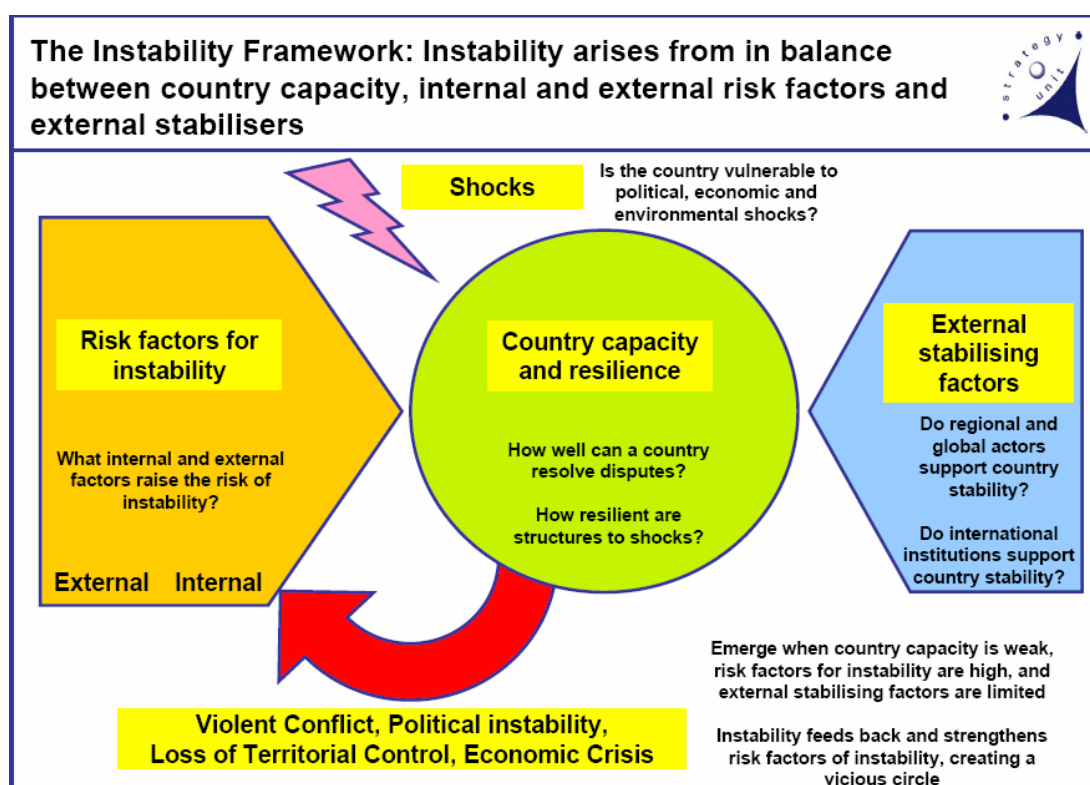


Figure 1. The Instability Framework

Source: Prime Minister's Strategy Unit, UK.

In measuring and ranking state capacity and state failure the greatest predicament is the difficulty of obtaining accurate data because of the very nature of fragile and failed states. As a result the indices, like all attempts to measure social and political phenomena, are imperfect but nevertheless provide a useful tool for the analysis of state failure.

The Failed States Index⁸⁶

The Fund for Peace through its Conflict Assessment System Tool (CAST) has developed a software version of a unique methodology for assessing conflict and failed states which has resulted in the Failed States Index (FSI).⁸⁷ The

⁸⁶ I first attempted to develop a Failed States Index in Donald W Potter, "State Responsibility, Sovereignty, and Failed States" (paper presented at the Australasian Political Studies Association Conference, University of Adelaide, 29 September-1 October 2004). However, I have since changed this to an index of state capacity so have adopted the index developed by The Fund for Peace to illustrate how state failure can be quantified.

⁸⁷ "The Failed States Index." See Appendix 2 for ranking details.

CAST methodology provides a framework for the early warning and assessment of states at risk of internal conflict and failure by using twelve social, economic, political and military indicators and then ranking sixty states in order of their vulnerability to violent internal conflict. The twelve indicators are demographic pressures, refugees and displaced persons, human flight, uneven development, economic decline, delegitimisation of the state, public services, human rights, security apparatus, factionalised elites, and external intervention. Each of these indicators is then ranked on a scale from 0 (low intensity) to 10 (high intensity). From this, the Failed States Index is developed as a total of the individual indicators (see Appendix 1). In addition, this data can be used to create trend lines over time by country, and by plotting the course of the conflict for each significant date, it is possible to visually depict the potential for conflict to turn violent or to be resolved.⁸⁸

Among the twelve indicators used to construct the FSI two factors constantly rate near the top. Uneven development is high among nearly all the states in the index, which suggests that inequality within states, and not just poverty, is a cause for increased instability. The delegitimisation of the state is also prominent and occurs when state institutions are regarded as corrupt, illegal or ineffective. In these cases people often shift their allegiance to other parties (e.g. opposition parties, warlords, ethnic groups or rebel forces).⁸⁹ The FSI does not provide easy answers for those looking for solutions for fragile and failed states but it does provide an approach for identifying states that are vulnerable to violent internal conflict and state failure.

The State Capacity Index

The State Capacity Index (SCI) on the other hand, relies on data from international organisations to quantify state weakness based on a state's

⁸⁸ Ibid.

⁸⁹ Ibid.

capacity to meet its responsibilities to provide a range of political goods and services to its citizens. The World Bank's 1997 World Development Report detailed a list of state functions, divided into three categories from minimal functions to activist functions, and which provided a benchmark for the scope of functions for which a state is responsible (Figure 2).⁹⁰

Minimal Functions	Intermediate Functions	Activist Functions
Providing Pure Public Goods	Addressing Externalities	Fostering Markets
Defence, law and order	Education	Cluster initiatives
Property rights	Environment	Redistribution
Macroeconomic management	Regulating Monopolies	Asset redistribution
Public Health	Utility Regulation	
Improving Equity	Anti-trust	
Protecting the poor	Overcoming Imperfect Info	
Antipoverty programs	Insurance	
Disaster relief	Financial Regulation	
	Consumer protection	
	Providing Social Insurance	
	Redistributive pensions	
	Family allowances	
	Unemployment insurance	

Figure 2. The Scope of State Functions

If these functions are arrayed on an X-axis it also allows countries to be located at different points along the axis depending on what their governments accomplish.⁹¹ Fragile and failed states have difficulty in providing even the minimal functions on this continuum.

The State Capacity Index is based on quantitative indicators developed from the state functions outlined in Figure 2. Although indicators of state failure are often underdeveloped and unreliable in fragile or failed states, it is possible to develop a model utilising indicators grouped under the following

⁹⁰ World Bank World, *The State in a Changing World* (Oxford: Oxford University Press, 1997)., quoted in Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Ithaca, New York: Cornell University Press, 2004)., 7.

⁹¹ Fukuyama, *State-Building: Governance and World Order in the 21st Century*., 8.

broad classifications: Governance; Economic; and Social Wellbeing. Although it could be contended that these concepts of responsibilities are essentially western in origin, they should be seen within the broader context of the global human rights norms. The Universal Declaration of Human Rights was the first international pronouncement of the human rights norms, and it places freedom, justice and peace in the world in the inherent dignity and equal and inalienable rights of all humans. The subsequent International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights further enhanced the ideal of free human beings enjoying civil and political freedom.

The June 2000 Ministerial Conference on “A Community of Democracies” and a non-governmental conference on “World Forum on Democracy” reaffirmed the developing and developed countries’ commitment to common democratic values and standards.⁹² It is these Charters, Covenants and other International Treaties that establishes the foundation for a state’s responsibilities to its citizens. Additionally, in September, 2005 at a meeting of world leaders at the United Nations it was agreed that “each individual state had the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity” and further that states ‘agreed to take collective action.....,through the Security Council, in accordance with the UN Charter,.....should peaceful means be inadequate and national authorities are manifestly failing to protect their populations.”⁹³

⁹² Final Warsaw Declaration: Toward a Community of Democracies. Warsaw, Poland, June 27, 2000. Available from US Department of State at <http://www.state.gov/g/drl/rls/26811.htm> (Accessed 27 October, 2005).

⁹³ UN Draft Outcome Document, September 13, 2005. Available from http://www.un.org/summit2005/Draft_Outcome130905.pdf (Accessed 15 November, 2005), 27.

It also reflects the solidarist's position, that the legitimacy of international society is strengthened by a commitment to human rights.⁹⁴

These rights are reflected in *Governance* which the World Bank has defined as the exercise of authority through formal and informal traditions and institutions for the common good. To enable citizens' political and civil rights to be quantified, the World Bank has developed and utilised six components; specifically, Voice and Accountability, Political Stability and the Lack of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption.⁹⁵

While the data on governance from the World Bank are relatively robust, obtaining data for fragile states for the economic and social-wellbeing classifications is more problematic. While many international organisations collect data that would be ideal for this exercise, when it comes to the weakest states the data are either not available, out of date or unreliable. However, as it is essential that these elements are included in the index, it has been decided to use the Human Development Index(HDI) developed by the UNDP.⁹⁶ The HDI is a summary measure of human development. By using life expectancy at birth, the adult literacy rate and the combined primary, secondary and tertiary gross enrolment ratio, and GDP per capita it measures the level of state achievement of the three basic dimensions of human development: a long and healthy life, knowledge and a decent standard of living.

The dimensions and indicators included in this model of state capacity (that is, the six World Bank indicators plus the HDI Index) have been chosen

⁹⁴ This solidarist position is further developed in Chapter 4.

⁹⁵ Full details of the indicators and the methodology used in calculating the ratings are available from the World Bank at <http://www.worldbank.org/wbi/governance/govdata/> (Accessed 15 September, 2004).

⁹⁶ See Human Development Reports at <http://hdr.undp.org/> (Accessed 31 August, 2004).

because of the relative quality and objectivity of their data, country coverage, and public availability. Each of the seven measures have been given equal weighting, which means that significantly greater weighting is given to governance than to human well-being, when rating state capacity. To permit the indicators to be utilised to identify and rank countries, the data in each dimension is standardised. The data are then aggregated so that each country has a single rating that can be used as a State Capacity Index and in which all countries can be ranked on a continuum of state capacity (Appendix 2).

Overall these data enable states to be located on a continuum of state strength from strong states, on the one hand to failed states on the other hand. Strong states control their territories and deliver a full range and a high quality of political goods to their citizens similar to the Western European countries, USA, Japan, Australia and the like. Failed states meet none of their state responsibilities and are generally tense, deeply conflicted and dangerous areas and often in a state of civil unrest. Current or recent examples are Somalia, Haiti, Sierra Leone, Afghanistan and the Democratic Republic of the Congo. Toward the failed end of the continuum is a large group of states that could be portrayed as fragile. These fragile states include a broad range of states that are enduringly fragile because of geographical, physical or fundamental economic constraints (Laos, Malawi and many of the small island states in the Pacific and Caribbean) or basically strong, but for the moment fragile because of internal antagonisms, bad management, despotism or external conflicts (Papua New Guinea, Zimbabwe and Uzbekistan).

Analysing the Indices

Both the FSI and the SCI indices demonstrate that the problem of state failure is serious in the 21st century, as about two billion people live in insecure states classed as fragile with varying degrees of vulnerability to civil conflict.

Actually identifying the difference between weakness and failure can be problematic. It could be argued that a state that meets very few of its responsibilities to make available political goods and services to its citizens, has failed or is in the process of failing. However, most definitions of state failure envision at least some civil conflict. Whereas the Failed States Index attempts to rank states in order of their vulnerability to conflict, the State Capacity Index requires some subjective judgements as to which fragile states show a high potential to fail and which are just enduringly fragile.⁹⁷ In both these groups, the willingness of these states to provide political goods in quantity and quality is severely limited and almost any external or internal shock could lead to failure.⁹⁸

Differences between the indices can be explained by the fact that they are measuring different aspects; the FSI is a state's vulnerability to conflict and the SCI a state's capacity to provide political goods and services. However, they do provide a guide to states that are at risk of failure. More detailed analysis on individual states can be carried out by utilising the "Instability Framework" model discussed above. This not only allows the reasons for the failure to be understood but will also provide a basis for deciding on what action, from aid to intervention, will be required to avoid a state's failure.

Five states rank in the top ten of the Failed States Index and the bottom ten of the State Capacity Index.⁹⁹ Somalia (FSI 5, SCI 209) is generally considered a

⁹⁷ Robert I Rotberg, "Failed States, Collapsed States, Weak States: Causes and Indicators," in *State Failure and State Weakness in a Time of Terror*, ed. Robert I. Rotberg (Washington D.C.: Brookings Institution Press, 2003). 4.

⁹⁸ Further details of all the states reviewed in the following paragraphs can be found in the following two data-bases: International Crisis Group: Conflict History available from <http://www.crisisgroup.org/home/index.cfm?id=2530&l=1> and BBC Country Profiles and Timelines available from http://news.bbc.co.uk/2/hi/country_profiles/default.stm

⁹⁹ Several states are examined in detail in the later chapter's case studies. The discussion here relates entirely to definitions and indices of fragile, failing or failed states. The Failed States Index rates states from most vulnerable to conflict in descending order and includes 60 states; the State Capacity Index rates state's capacity from strongest to weakest and covers a total of 209 states.

collapsed state. Although its people share a common cultural tradition, language and religion, it is dominated by war lords who each control large swaths of territory. Any semblance of unity was destroyed by the dictator Siad Barre who grabbed power in a coup in 1969, and over the next twenty years destroyed the institutions of government and democracy, abused citizens' human rights and channelled as many of the resources of the state as possible into his own and his clan's hands. As a result, the other clans became alienated and civil war resulted in 1991, and despite some recent moves towards settlement, the state remains deeply divided and can still be considered a failed state.

Iraq (FSI 4, SCI 208) was a deeply conflicted state before the recent intervention led by the USA. The central government only had limited control of their territory (due to no-fly zones controlled by American and British forces), and the level of services provided outside core areas were minimal (mainly due to a lack of resources resulting from a UN embargo on oil sales). Although it has recently elected a democratic government it has yet to establish control over all its state and must be still considered as failed.

Liberia (FSI 9, SCI 206) may also be classified as a failed state. Like many other African states, Liberia has long exhibited very fragile bureaucratic capacities. However, coups in 1980 and 1990 led to the destabilisation of the country but eventually resulted in elections for the president and legislature which international observers declared to be free and fair. However, a rebel uprising begun in 1999 resulted in full scale civil conflict and state failure. Intervention by the UN in 2003 stopped the conflict, and elections were held in 2005, but Liberia remains an extremely fragile state.

Haiti (FSI 10, SCI 202) is the poorest state in Latin America and the subject of two UN authorised interventions in the last twelve years. The first in 1994

was to reinstall the popularly elected President Jean-Bertrand Aristide who had been disposed in a military coup. However unrest continued with disputed elections, growing economic impoverishment and a serious deterioration of human rights. Faced with the threat of large-scale clashes and a decline of international support Aristide left the country in 2004. The UN authorised a rapid deployment of a Multinational Interim Force to stabilise the country and power was transferred to this interim force. Despite this Haiti remains deeply conflicted although elections for both the presidency and parliament in the first half of 2006 have given reason for optimism that it may be moving away from failure.

The final common state is the Democratic Republic of the Congo (FSI 2, SCI 205). Potentially one of the richest states in Africa, the Congo has been fragile throughout its history as an independent state. The UN first intervened in 1960 to prevent Katanga seceding. In 1965 Colonel Mobutu took power and used his position to enhance his personal wealth, to heighten his stature over his people, and to weave a closely manipulated web of loyalties across the army and all aspects of Congolese life. The action to depose him by rebel forces backed by Uganda and Rwanda in 1997 led to further conflict, expanding to include Zimbabwe, Namibia, and Angola, and ultimately resulting in the death of three million people. Strife continues in many areas of the country, particularly the Great Lakes region, and the government in Kinshasa has only a tenuous hold on much of the country.

The other five countries in the top ten of the Failed States Index include Cote d'Ivoire (FSI 1, SCI 197) and Sierra Leone (FSI 6, SCI 188) both of which were racked by civil war in the 1990's and which remain unstable and would most probably fail without the presence of UN peacekeepers. The Sudan (FSI 3, SCI 199) has just signed a peace agreement with the south of the country after a thirty year civil war, but has been accused of committing genocide in

the Darfur region, and the country remains a extremely unstable. The remaining two are Chad (FSI 7, SCI 192) and Yemen (FSI 8, SCI 187).

In the State Capacity Index Afghanistan (FSI 11, SCI 207) and Burundi (FSI 17, SCI 200) are both states that failed in the 1990's but are recovering although still extremely fragile. Both Myanmar (FSI 23, SCI 203) and North Korea (FSI 13, SCI 204) are fragile states that could implode if their dictatorial regimes are toppled. Zimbabwe (FSI 15, SCI 201) is an example of a once strong African state that has fallen rapidly through weakness to the edge of failure. Without outside intervention it is difficult to imagine it avoiding total failure.

The countries discussed are by no means the only states at risk of failure. Columbia, Guinea, Niger, Uzbekistan, Papua New Guinea, Central African Republic and Bangladesh are just a few of the fragile states that are also at risk. In reality, of the two hundred and nine states in the State Capacity Index one hundred and two attain less than fifty percent of the maximum rating. This includes a wide range of states such as Albania, Algeria, Argentina, Bolivia, Honduras, Kazakhstan, Mali, Moldova, Morocco, Paraguay, Saudi Arabia, Senegal, Tanzania, and Zambia that are not at great risk of failure at the current time, but which do not provide their citizens with adequate services, and which could, if events conspire against them, deteriorate quickly and be at threat of failure.

Conclusion

The foremost problem for the international community in dealing with failed states is in defining exactly what and which they are. This dissertation defines state failure as the demise of the practical operation of governmental functions for an internationally recognised state. It need not be reserved for cases of complete state collapse, either into civil war or anarchy but must also

be understood as a process involving the weakening of a state's capacity to provide legitimate governance, that is, the failure to provide essential political goods and services to its citizens. Furthermore, state failure should be seen as a continuum which ranges from fragile states, through failed states to collapsed or non-states.

To understand the dynamics of state failure, the U.K. Prime Minister's Strategy Unit developed the Instability Framework Model to examine the interaction between a country's internal capacity and resilience, the underlying factors associated with instability and external stabilisers. Making use of this model as a starting point two indices were used to assist in identifying fragile and failed states. Firstly, The Fund for Peace's Failed States Index identified states who failed to meet their responsibility to provide security to its citizens by evaluating their vulnerability to violent internal conflict. Secondly, the State Capacity Index was developed to quantify a state's weakness based on its capacity to meet its responsibility to provide a range of political goods and services to its citizens.

States have a responsibility to provide political goods and services to their citizens, and states that fail to do so can be identified empirically based on quantitative indicators. The State Capacity Index, The Failed States Index and the Instability Framework Model highlight the existence of many such states, by providing an objective basis for identifying states that fail to meet these responsibilities. Even if further refinement of the indices is required, they provide a tool for the international community to utilise when considering humanitarian interventions into fragile and failed states in the twenty-first century.

Intervention in Fragile and Failed States

Fragile states demonstrate a weakness or failure of the state institutions which increases the vulnerability of citizens to harm from criminal activity, terrorism, civil conflict and the intensification of refugee flows. In earlier eras, when the world was less inter-connected, state failure had little impact on the international community, but now it can pose significant dangers to other states. As instant access to information through the global media heightens the awareness of the human suffering, it increases the possibility of other states intervening, either through international institutions or on a unilateral or multilateral basis outside the authority of those institutions.

Interventions into the affairs of a state by third parties are not a new phenomenon. They have been associated with power asymmetries, religious values, the rights of minorities and in more modern times with humanitarian values. Interventions through power asymmetries can be traced back to at least ancient Greece and are reflected in Thucydides' account of the Athenians' statement to the Melians: "[I]n fact the strong do what they have the power to do and the weak accept what they have to accept."¹⁰⁰ Throughout history intervention has been a tool in the geopolitical race for the conquest of new, and maintenance of old, territories.

The middle ages witnessed the development of religious values as an important justification for intervention into the affairs of another state and this is best demonstrated by the Crusades. The Crusades were military expeditions beginning in 1095 and undertaken by Western European

¹⁰⁰ From Thucydides, *The Peloponnesian Wars*, quoted in Stephen D. Krasner, "Sovereignty and Intervention," in *Beyond Westphalia? State Sovereignty and International Intervention*, ed. Gene M. Lyons and Michael Mastanduno (Baltimore: The John Hopkins University Press, 1995), 246.

Christians, usually at the request of the Pope, to recover Jerusalem and the other places of pilgrimage in the Holy Land from Muslim control. Although there is disagreement on when crusading came to an end, it is generally acknowledged that they concluded when King Louis IX, who organised the last major Crusade, died in Tunis in 1270.

The central question, involving rulers and ruled, throughout the early modern period in Europe was the practice of religion. The Reformation had broken any illusions of Christian unity and became a key concern for secular rulers because religion impinged, not only on the legitimacy of individual “crowns”, but it also affected the stability of the European state system. The failure to resolve religious questions contributed to the interventions and outright wars in the sixteenth and seventeenth centuries culminating in the Thirty Years’ War. Although non-intervention was ignored in the provisions that dealt with religious questions in the Peace of Westphalia that ended the Thirty Years’ War, it did establish rules that defined the control that rulers could legitimately exercise over religious matters.¹⁰¹ Eventually these rules led to the norm of non-intervention that remained a corner-stone of the international system even until today.

The doctrine was never quite absolute post-Westphalia, however, the protection of rights of some minorities has been a concern of the international community since at least the nineteenth century, and much earlier if European attention to the fate of Christians in the Ottoman Empire is taken into account. Systematic efforts were made to create a regime that would provide for the protection of such rights, and the protection of minorities was included in a number of treaties in the nineteenth century and again, after

¹⁰¹ Ibid., 235.

World War I when a monitoring and enforcement mechanism was established within the League of Nations.¹⁰²

Since 1945 a body of international law on humanitarian intervention has been developed and during the period 1945 to 1989 humanitarian intervention was the least controversial when it applied to a state rescuing its own nationals who were facing extreme danger on the territory of another state that was unable or unwilling to protect the nationals of the first state.¹⁰³ Among the most prominent of these cases were Israel's raid on the Entebbe airport in Uganda in 1976, the hostage rescue operations in the Democratic Republic of the Congo in 1964 and 1978, and the United State's rescue of the crew of the American merchant ship SS Mayaguez, which had been captured by Cambodia in 1975. Conversely, during this period there were four main cases of intervention where the intended beneficiaries were nationals of the state in which the intervention took place. In 1971 in the first of these examples, India intervened in East Pakistan¹⁰⁴ to end the fierce repression of the Bengali people by the West Pakistan army. Other examples were Vietnam's invasion of Cambodia in 1978 to overthrow a genocidal regime, Tanzania's Invasion of Uganda in 1979 to get rid of Idi Amin's brutal regime, and finally France's action in 1979 to remove Jean-Bédél Bokassa as ruler of the Central African Republic. In none of these cases did the intervening states seek to justify their actions on humanitarian grounds, which by current standards may have been possible, but instead claimed justification on alternative grounds.¹⁰⁵

¹⁰² Ibid.,236

¹⁰³ A. Mark Weisburd, *Humanitarian Intervention 1945-89* (American Diplomacy, 2001; available from http://www.unc.edu/depts/diplomat/archives_roll/2001_07-09/hum_intervention/hum_04_weisburd.html). (Accessed 31 October, 2005).

¹⁰⁴ Now Bangladesh

¹⁰⁵ With the partial exception of India. See Chapter 6 for full details of the first three cases.

Over the last twenty years the issue of humanitarian intervention has emerged and generated heated debate. Traditionally, humanitarian intervention has been defined as the coercive interference in the internal affairs of a state, frequently involving the use of armed force, with the purpose of addressing massive human rights violations or preventing widespread human suffering.¹⁰⁶ Humanitarian intervention increased during the 1990s through the development of the notion of 'sovereignty as responsibility' (i.e. respect for a minimum standard of human rights) in lieu of 'sovereignty as authority' (i.e. control over territory) and through an expanded definition of what constitutes a threat to international peace and security under chapter VII of the United Nations Charter. Additionally, in September, 2005 at a meeting of world leaders at the United Nations it was agreed that "each individual state had the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and further that states "agreed to take collective action.....through the Security Council, in accordance with the UN Charter,.....should peaceful means be inadequate and national authorities are manifestly failing to protect their populations."¹⁰⁷ Regardless of these developments the concept of humanitarian intervention remains a controversial norm in international relations.¹⁰⁸

However, in the 21st century it is a responsibility of the international community to reduce human suffering by assisting fragile and failed states in rebuilding their capacity to meet their responsibilities to provide political, economic and social goods and services to their citizens. No longer is it acceptable for the international community to close their eyes to the fragile

¹⁰⁶ Jennifer M Welsh, *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 1.

¹⁰⁷ UN Draft Outcome Document, September 13, 2005. Available from; http://www.un.org/summit2005/Draft_Outcome130905.pdf (Accessed 15 November, 2005), 27.

¹⁰⁸ Welsh, *Humanitarian Intervention and International Relations*, 2.

and failed states until the only resolution is forcible intervention. Human suffering places a moral burden on international society and the fundamental norms of human rights that, if crossed, make it legitimate for other states to intervene.¹⁰⁹ Fragile states are a problem to the entire international system as the state system exists to provide order. Disintegration of states often creates regional instability, refugee flows and can also provide a base for international terrorist or criminal activities that have grave consequences for other states. Since the end of the cold war there has been a shift to an international community in which, progressively, more and more states value freedom, human rights, the rule of law and democracy. Humanitarian intervention in fragile states should be understood as not only the use of force, but as a continuum of actions intended to underwrite access to these basic rights.

This chapter explores the technicalities of intervention, that is, just how the intervention is executed. This involves three main facets, all of which are interrelated. Firstly, it is necessary to determine the occasions on which to intervene. This should be based on the responsibility of a state to provide its citizens with a minimum range of political goods and services as outlined in Chapter 1. This also needs to take account of the urgency or timeliness of any intervention. The second aspect is to identify who will execute the action. Generally intervention is perceived as a function of the international community, but, defining this term can be elusive. In actuality, a range of actors may be involved in the process of authorising or carrying out interventions into fragile or failed states, from inter-government organisations (both global and regional) to a hegemonic power or grouping of powers. Finally, it is necessary to establish the means by which that action

¹⁰⁹ Hans-Henrick Holm, "Failing Failed States: Who Forgets the Forgotten?," *Security Dialogue* 33, no. 4 (2002), 460.

will be carried out and a way to determine when the intervention should be concluded.

The Modus Operandi of Intervention

Intervention is not a single phenomenon. It is better understood as a continuum of possible actions by states intended to alter the internal affairs and behaviour of other states.¹¹⁰ In attempting to influence or change the internal politics of another state, intervenors may use political, economic or military instruments.¹¹¹ Intervention is not a new phenomenon; great powers have throughout history exerted their influence when they have perceived their national interests are at stake. Additionally, the large increase in the number of states following decolonisation has seen efforts to pressure many of these states to improve their domestic affairs by inter-government organisations such as the International Monetary Fund and the World Bank.

In the 1990s greater emphasis was placed on humanitarian intervention, that is, the use of force across state borders by a state or group of states, aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the government of the state within whose territory force is applied.¹¹² However, for states to intervene for humanitarian reasons there needed to be extreme events such as ethnic cleansing of a province or country or the systematic massacre of a religious or national community. These events are not seen as part of a continuum that begins with common nastiness and ends with genocide but are seen as a radical break, a chasm,

¹¹⁰ Thomas G. Weiss, "Triage: Humanitarian Interventions in a New Era," *World Policy Journal* 11, no. 1 (1994), 59.

¹¹¹ S. Neil MacFarlane, *Intervention in Contemporary World Politics, Adelphi Paper 350* (Oxford: Oxford University Press, 2002), 13.

¹¹² Tom J. Farer, "Humanitarian Intervention before and after 9/11: Legality and Legitimacy," in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 55.

with nastiness on one side and genocide on the other and it was only in these circumstances that forcible intervention could be undertaken.¹¹³

On the other hand, the terrorist attacks on New York and Washington on 11 September 2001, have highlighted to the international community that instability within, or the collapse of, a state may have implications that reach far wider than that state or region. Addressing the challenges posed by fragile states before they cross the chasm of failure will become a crucial requirement for the international community in the 21st century. To do this there needs to be a broader conception of the idea of humanitarian intervention in fragile and failed states. Ramsbotham¹¹⁴ suggests that both the 'intervention' and 'humanitarian' components of the combined concept of humanitarian intervention stand in need of reconceptualisation. His solution is to adopt the term forcible humanitarian intervention for the original concept which includes actions authorised by the UN Security Council as well as individual states but then follows David Sceffer¹¹⁵ and introduces the term 'non-forcible intervention' to cover a range of actions by state and non-state actors.

This dissertation proposes that humanitarian intervention should be reconceptualised to mean cross-border action by the international community (which can be by inter-governmental organisations (IGOs), non-governmental organisations (NGOs), or states acting either unilaterally or multilaterally, or a combination of the above), in response to human

¹¹³ Michael Walzer, "The Argument About Humanitarian Intervention," *Dissent* 49, no. 1 (2002), 29-38. Available from ProQuest: Address; <http://proquest.umi.com/> (Accessed 24 March, 2004).

¹¹⁴ Oliver Ramsbotham, "Human Intervention 1990-5: A Need to Reconceptualise," *Review of International Studies* 23 (1997), 456.

¹¹⁵ David Scheffer, "Toward a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review* 23 (1992), 267.

suffering.¹¹⁶ The action can be made up of coercive humanitarian intervention or non-coercive intervention which can be analysed in a four part typology as follows:

Coercive humanitarian intervention

- Coercive military humanitarian intervention,
- Coercive non-military humanitarian intervention.

Non-coercive humanitarian intervention

- Non-coercive military humanitarian intervention (e.g. UN peace-keeping),
- Non-coercive, non-military humanitarian intervention.

In Chapter 1, states were ranked on a two continuums; one based on a state's capacity to provide political goods and services to their citizens, and the other on the basis of a state's vulnerability to conflict. The question that arises is this, can these State Capacity and Failed State Indices be used to determine when and where to intervene into fragile and failed states? There is little doubt that state failure is the cause of a great deal of human suffering. By conceptualising intervention as a continuum it provides a means to identify a range of options for intervention, from co-operative, non-military intervention through coercive non-military intervention to forcible military intervention depending on the capacity of the state. This reconceptualisation of the term 'humanitarian intervention' allows for debate on issues that are missed by exclusive preoccupation with the classical definition, highlights the dichotomy between the forcible and non-forcible elements of the debate, breaks away from the all or nothing options of the classic definition, and

¹¹⁶This reconceptualisation is a modified version of a typology developed by Ramsbotham, "Human Intervention 1990-5: A Need to Reconceptualise."

opens the way for a proper comparison of more nuanced choices of intervention.¹¹⁷

Actors (who decides, who intervenes)

Interventions into fragile and failed states are often considered to be the responsibility of the international community although defining this term is difficult, as the concept of “international community” is elusive. Ayoob, adopting a pluralist approach, questions whether people stop to think what the term really means and in particular whether a less than representative body, such as the UN Security Council, or a military alliance such as NATO, should be permitted to appropriate to itself the right to speak and act on behalf of the international community. The confusion over the term is particularly noticeable when these “representatives” of the “international community” select specific states which they believe warrant intervention, while ignoring human rights violations of equal or greater magnitude in other states.¹¹⁸

Traditional approaches such as Kenneth Waltz’s realist model of the international system and Hedley Bull’s internationalist model of international society do not directly deal with the concept of the “international community”.¹¹⁹ The Waltzian realist position argues that, in the international system, behaviour is guided by expediency, necessity and opportunity.¹²⁰ It goes on to suggest that consensus among states is rarely obtained as each is more concerned with achieving an advantage rather than developing the common rules and co-operation necessary for the development of a community. On the other hand, Bull notes that states do

¹¹⁷ Ibid., 459.

¹¹⁸ Ayoob, "Humanitarian Intervention and International Society." 225.

¹¹⁹ Bruce Cronin, "Multilateral Intervention and the International Community," in *International Intervention - Sovereignty Versus Responsibility*, ed. Michael Keren and Donald A. Sylvan (London: Frank Cass & Co. Ltd., 2002)., 153.

¹²⁰ Kenneth Waltz, *Theory of International Politics* (New York: Random House, 1979)., 106.

form a society in the sense that they are aware of certain common interests and values and that they are bound by a limited set of common rules that include respecting the independence and sovereignty of individual states, honouring agreements and accepting limitations in exercising force against one and other.¹²¹ Bull never refers to an “international community” but does recognise a society to the extent that they have established, by dialogue and common consent, rules and institutions for the conduct of their relations and a recognition of a common interest in them maintaining these arrangements.¹²²

Nevertheless, in the twenty-first century the concept of an international community needs to go further if it is to provide a basis for humanitarian intervention in fragile and failed states. Tony Blair believes that there is a need for a new doctrine of international community, by which he means the explicit recognition that today, more than ever before, the world is mutually inter-dependent and that the national interest, is to a significant extent, governed by international collaboration.¹²³ To Blair the essence the community is common rights and responsibilities which also reflects a solidarist approach to the concept of international community. In this way states have common obligations and responsibilities in relation to each other.

Cronin notes that an international community can be said to exist when three conditions are met.¹²⁴ First, there must be at least a moderate degree of consensus among the major powers regarding the fundamental principles of global politics. Three key issues that states must settle in order to create a consensus agenda are: the identity of the international actors, their relative

¹²¹ Hedley Bull, *The Anarchical Society* (London: Macmillan Press Ltd, 1995), 13.

¹²² Georg Sorensen, "Sovereignty: Change and Continuity in a Fundamental Institution," *Political Studies* 47, no. 3 (1999), 593.

¹²³ Tony Blair, "Doctrine of the International Community," in *The Neocon Reader*, ed. Irwin Stelzer (New York: Grove Press, 2004), 24.

¹²⁴ Cronin, "Multilateral Intervention and the International Community." 154-154.

status vis-a-vis one another, the distribution of territory and population between them, and the procedures through which the relations among the actors are conducted.¹²⁵ Such a consensus enables them to act in concert while providing a mutual check against unilateral pursuit of parochial interests. At the same time, since all political communities have dissidents, absolute consensus is not required for an international community to develop. At the current time the five permanent members of the UN Security Council go to extraordinary lengths to coordinate their efforts in order to avoid disruption of the cohesion of the community.¹²⁶

Second, the consensus principles must enjoy widespread support from the smaller states and the key domestic groups within them. A collectivity comprised of a select group of powerful states may constitute a type of community, however, if it is closed and exclusive it cannot properly be called an international community.¹²⁷ Similarly, principles shared by a collectivity but rejected by domestic social and cultural groups cannot form the basis of an international community. Today some small states query whether a less than representative body such as the UN Security Council should be permitted to speak and act on behalf of the international community. As noted previously, this problem becomes more acute when these representatives of the international community choose targets for intervention selectively while ignoring similar violations of equal or greater magnitude elsewhere.

Finally, there must be a universal membership organisation with the legal and political authority to create and enforce norms of behavior. Stability and cohesion require a universal institutional expression of the community as

¹²⁵ Andreas Osiander, *The States System of Europe, 1640-1990: Peacemaking and the Conditions of International Society* (New York: Oxford University Press, 1994), 6-7.

¹²⁶ Cronin, "Multilateral Intervention and the International Community." 154.

¹²⁷ Ibid., 155.

well as a means for facilitating group commitment.¹²⁸ The United Nations creates structures that allow all states willing to accept its basic principles to anticipate as full and equal members. The problem that arises is, that since intergovernmental bodies tend to reflect the distribution of power among their members, weaker states hesitate to grant them substantive authority that could potentially threaten their own sovereignty.

So can it be said that there is an international community that acts for the great majority of states in the world? Most probably not. At the moment states that would identify themselves as belonging to an international community are generally free, democratic and benefiting from the economic progress. To a large extent states make use of the concept of international community to provide international legitimacy - defined as the approval of the liberal democratic world – for their actions, but this legitimacy is not always recognised by states that may be the subject of intervention. While the number of free and democratic states in the world is rapidly increasing there are still many states that do not recognise the existence of an international community and see it only as a device of the liberal democratic world to enforce their norms on others. Therefore, when considering the issue of intervention into fragile and failed states, it is more beneficial to consider the interventions as either multilateral or unilateral.

As discussed previously, intervention can range from cooperative non-forcible intervention through to the coercive use of military force. These distinctions are crucial in determining the likely nature of the intervention and the actors involved. Unilateral interventions can either be on a cooperative basis or on a non-forcible coercive basis, but commonly, humanitarian forcible interventions now should be multilateral to be considered legitimate. Without multilateralism, claims of humanitarian

¹²⁸ Ibid., 155.

motivation and justification are suspect.¹²⁹ Preferably they should be organised under UN auspices, or with, at the minimum, multilateral consent. The failure to intervene multilaterally creates political costs for the unilateral intervenor as other states can question its aims and motives and challenge the legitimacy of the intervention.

When discussing multilateral intervention it is important to differentiate between those who decide and those who intervene. In an ideal world all forcible interventions should be determined by the United Nations Security Council which is empowered to authorise action in all cases other than those that clearly meet the Article 51 self defence criterion. A problem arises when the UN Security Council does not act because of differences between the members of the Council, and in these situations, it is unrealistic to expect states to rule out other means and types of action to rectify the situation. In these cases the decision to intervene has often been made by regional organisations such as NATO, or the Economic Council of West African States (ECOWAS), or hegemonic powers who are closer to the problem and more likely to be affected by disruptions in a neighbouring country.

Similarly, although the United Nations has strengths in deciding on multinational interventions it has to be recognised that there are limits to the UN operational role. The UN's traditionally limited rules of engagement, patched together military forces, inadequate logistical infrastructure, and other limited military capabilities have proven inadequate in situations that require forceful intervention. Regional organisations, alliances, or coalitions

¹²⁹ Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (New York: Cornell University Press, 2003), 78.

are often better able to perform the tasks of forcible intervention than a UN assembled force from other parts of the world.¹³⁰

Interventions such as France's invasion of the Central African Republic to end the murderous regime of Jean-Bedel Bokassa, and NATO's 1998 air campaign against the Former Republic of Yugoslavia to stop ethnic cleansing in Kosovo, are both examples of unilateral or multilateral interventions undertaken outside the authority of the United Nations. In fact, these are only two of several interventions in the last 30 years that have been carried out without UN authority. Other agents of intervention have been regional communities, as represented by organisations such as NATO or ECOWAS, or hegemonic states acting either individually or in concert with other states. When it comes to humanitarian intervention maybe the maxim should be; those who can, should.¹³¹

Means and Ends

An intervention into a fragile and failed state is intended to change its internal policies to improve the well-being of its citizens and the intervenor may use a range of political, economic or military instruments to realize its aims. The intervention may be one of two types. First, the intervention may be based on co-operation, that is, the parties agree to work or act together. Second, the intervention may be the result of coercion, where one party threatens to impose sanctions on the other unless it agrees to compromise its domestic autonomy. At its most extreme coercive intervention may involve the use of military force but usually there are more subtle, lower-level coercive sanctions that can be brought to bear on states, involving diplomatic and/or economic dealings. Theoretically the target state can either acquiesce

¹³⁰ Bruce W. Jentleson, "Tough Love Multilateralism," *The Washington Quarterly* 27, no. 1 (2003), 18.

¹³¹ Walzer, "The Argument About Humanitarian Intervention."

or resist, but usually the rulers of a target state have little choice as they are so weak that they must accept the domestic structures, policies or personnel preferred by the more powerful actors or else suffer unacceptable consequences or even elimination.¹³²

However, these interventions, whether authorised by the UN Security Council or not, can be viewed as instruments of control by the strong against the weak. Although these interventions may be valid they can invoke images of colonial domination under the guise of the “standard of civilisation” doctrine, particularly when these standards are applied selectively to suit the interests of the major powers.¹³³ But it must be remembered that strengthening fragile states against failure is easier than reviving them after they have definitely failed or collapsed but, in either case, only a process of state-building will return the state to a fully functioning member of the community of nations.

At this point it is appropriate to distinguish between state-building and nation-building. Nation-building was a popular concept during the Cold War when many countries obtained their independence but the idea that outsiders can build nations, if that means creating the cultural, social and historical ties that unite people together as a nation, is clearly not feasible. State-building on the other hand concentrates on the creation or rebuilding of the political, social and economic institutions of the state.¹³⁴

¹³² Stephen D. Krasner, "Compromising Westphalia," *International Security* 20, no. 3 (1995), 136.

¹³³ Ayooob, "Humanitarian Intervention and International Society." 226.

¹³⁴ Fukuyama, *State-Building: Governance and World Order in the 21st Century*, 100-101.

The process of state-building consists of four distinct interrelated categories of tasks.¹³⁵ The first requirement is security, both internal and external, which should deal with all aspects of public safety, and in particular the creation of a secure environment and the development of legitimate and effective security institutions. The second requirement is governance, that is, the creation of legitimate and effective political and administrative institutions and participatory processes. This should include the strengthening of public sector management and administration, the establishment of a proper representative constitutional structure, and ensuring the active and open participation of civil society in the formulation of the country's government and its policies. The third requirement is the development of a justice system which is impartial and accountable with an effective law enforcement apparatus, an open judicial system, fair laws, and a humane corrections system. The final requirement is the development of economic and social institutions that provide the basis for a viable economy and a sustainable development program, and the provision of essential services to the population in areas such health and education.¹³⁶

State-building in fragile and failed states has had varied success. While the international community has had some successes in re-establishing law and order in an immediate post-conflict situations, it is less successful in dealing with the second stage of state-building which involves a sustained long-term commitment to establishing or strengthening legitimate, self-sustaining political institutions that eventually allow the state in question to wean itself from outside assistance.¹³⁷ However, some lessons have been learnt. As Kofi Anan has noted "All these tasks - humanitarian, military, political, social,

¹³⁵ These categories have been adapted from John J. Hamre and Gordon R. Sullivan, "Toward Postconflict Reconstruction," *The Washington Quarterly* 25, no. 4 (2002). Available from Project Muse http://muse.uq.edu.au.ezproxy.utas.edu.au/journals/washington_quarterly/ (Accessed 25 April, 2005).

¹³⁶ Ibid.

¹³⁷ Fukuyama, *State-Building: Governance and World Order in the 21st Century*. 102.

and economic – are interconnected, and the people engaged in them need to work closely together. We cannot expect lasting success in any of them unless we pursue all of them at once as part of a single coherent strategy. If the resources are lacking for any of one of them, all the allies may turn out to have been pursued in vain.”¹³⁸

Therefore, for state-building to be successful the international community needs to adopt a few general rules if it is to develop a strategy and implement it successfully. First, the local population cannot be left to solve its own problems but the primary responsibility and leadership roles must rest with the people of the country in question. The international community can play a critical role in providing assistance. Second, acceptable security is an absolute requirement for state-building, therefore, any international presence must address security issues at the very beginning and throughout the course of intervention. At the same time, security operations should not displace initial efforts in other areas such as justice, social and economic well-being, or governance. Third if more than one actor is involved in the intervention it is essential that there is a unity of effort so the international actors must establish an appropriate division of labour and plan, coordinate, and execute operations together. Fourth, a logical sequence must be developed to sustain the strategic approach. As all cases are different the sequence must be designed to choose areas in which success can be demonstrated early, so that momentum can be built and sustained. Finally, the international community’s strategy should envisage a realistic time scale. History demonstrates the state-building can be a long process and an unrealistic timeframe is likely to see the process end in failure.¹³⁹ Indeed, given the low level of stateness in many fragile and failed states, there is a question as to whether there is any real alternative to a quasi-ongoing

¹³⁸ Kofi Annan, "Speech to the UN General Assembly," (New York: 2002).

¹³⁹ Hamre and Sullivan, "Toward Postconflict Reconstruction." 3-5.

colonial relationship between the failed states and the international community.¹⁴⁰

Conclusion

Humanitarian intervention is the interference into the internal affairs of a state, typically coercively, by another state or coalition of states with a view to ending human rights violations or preventing widespread human suffering. This chapter canvassed the *modus operandi* of intervention which is not a single phenomenon but better understood as a continuum of possible actions by states intended to alter the internal affairs and behaviour of other states.

To reflect the assertion that humanitarian intervention is a continuum, a reconceptualisation of the term was recommended. By conceptualising intervention as a continuum of alternate actions, it provided a means to identify a range of options for intervention, from co-operative, non-military intervention through coercive non-military intervention to forcible military intervention depending on the circumstances of the state. This reconceptualisation highlights the dichotomy between forcible and non-forcible elements of the debate, breaks away from the all or nothing approach of the classical definition and opens the way for more nuanced choices of humanitarian interventions.

Forcible interventions into fragile and failed states are the responsibility of the international community, normally since 1945 acting through the authority of the United Nations. However, when the UN Security Council fails to act due to differences between members action may be undertaken (even if illegal) by regional organisations such as NATO, the African Union, or ECOWAS, or hegemonic powers which are closer to the problem and

¹⁴⁰ Fukuyama, *State-Building: Governance and World Order in the 21st Century*. 104.

more likely to be affected by disruptions in a neighbouring country. Non-forcible interventions may involve a range of actors including IGOs and regional hegemonic powers.

The first requirement of humanitarian intervention is to deal with all aspects of public safety, both internal and external, and then to assist in creating or rebuilding the political, social and economic institutions of the state. Experience demonstrates that state-building is a difficult process but addressing the challenges posed by fragile and failed states is a crucial requirement for the international community in the 21st century.

Intervention is a controversial concept in international relations but can be justified on moral, legal and political grounds. The arguments in all these areas will be examined and discussed in Chapter 4 from the viewpoint of a forceful liberalism that emphasises intervention (whether authorised by the United Nations or not) in the defence of human rights.¹⁴¹ It contends that human suffering places a moral burden on international society and the fundamental norms of human rights that, if crossed, make it vital for other states to intervene. However, no analysis of the legal and moral justifications can begin unless deliberation is first given to the *grand norm* of international relations; sovereignty.

¹⁴¹ Robert O. Keohane, "Political Authority after Intervention: Gradations in Sovereignty," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. I. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 10.

Sovereignty: From Westphalia to Responsibility

The question of state failure and the potential for intervention raises larger question: what effect does a state's failure have on its sovereignty? Is sovereignty a right or a responsibility? The traditional philosophy of "sovereignty as a right", that has held sway since the Peace of Westphalia in 1648, has been that a country's internal affairs are its own and that other states do not intervene unless it threatens them, or breaches a treaty, or triggers an obligation of alliance. This is illustrated by United States Secretary of State Robert Lansing who, when declining to pursue action against the leaders of Germany, Austria and Turkey at the conclusion of World War I for what would now be known as "crimes against humanity", said "the essence of sovereignty is the absence of responsibility".¹⁴² Reflecting the view of the time, he said sovereign leaders should be immune from prosecution and that the United States could only judge those violations that were committed against American persons or property.

On the other hand, responsible sovereignty requires that states provide the appropriate standard of political goods and services to ensure the protection and well-being of their citizens.¹⁴³ If they refuse assistance there is a responsibility by the international community to react. This creates a dual characteristic to sovereignty: an internal component which relates to the state and its relationship to its people, and an external component which manages the relationships between states. These two components are increasingly intertwined when examining humanitarian intervention and fragile and

¹⁴²Power, "a Problem from Hell" America and the Age of Genocide., 14.

¹⁴³ Stuart Croft, "International Relations and Africa," African affairs 96, no. 385 (1997). Available from ProQuest; Address: <http://proquest.umi.com> (Accessed 26 April, 2004).

failed states'.¹⁴⁴ These two approaches can also be seen as part of the pluralist/solidarist debate in which pluralists focus on states and the rules of international society that provide for order, whereas solidarists look to justice for the individual, arising out of a deeper commitment to human rights.

There are many other ways of exploring the concept of sovereignty. Robert Jackson refers to positive and negative sovereignty and the concept of "quasi-states".¹⁴⁵ This term refers to states that lack the capacity to support themselves without outside assistance, or to contribute to the international order, but who are legally recognised through membership of the United Nations. Stephen Krasner argues that the Westphalian model of sovereignty, based on the principles of autonomy and territory, has never been an accurate description of many of the entities called states, since breaches of the model have been an enduring characteristic of the international system.¹⁴⁶ Traditional state sovereignty is also challenged by the changing balance between states and people as the source of legitimacy and authority.¹⁴⁷ UN Secretary-General Kofi Annan helped launch a debate on the legitimacy of intervention on humanitarian grounds in an article on the "two concepts of sovereignty" in *The Economist*.¹⁴⁸ In it he argued that one concept of sovereignty is orientated around states and the other around people:

State sovereignty, in its most basic sense, is being redefined – not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments

¹⁴⁴ Richard Herr, "The Concept of the 'Failed State': A Brobdingnagian View from Lilliput," in *New Zealand in a Globalising World*, ed. Ralph Pettman (Wellington: Format Trade Paperback, 2005).

¹⁴⁵ Robert H. Jackson, *Quasi States: Sovereignty, International Relations, and the Third World* (Cambridge: Press Syndicate of the University of Cambridge, 1990).

¹⁴⁶ Krasner, "Compromising Westphalia," 115.

¹⁴⁷ Thomas G. Weiss and Don Hubert, *The Responsibility to Protect: Research, Bibliography, Background*. (International Commission on Intervention and State Sovereignty, 2001); Available from <http://www.iciss-ciise.gc.ca/menu-e.asp> (Accessed 2 November, 2002).

¹⁴⁸ Kofi A. Annan, "Two Concepts of Sovereignty," *Economist*, 18 September 1999.

at the service of their peoples, and not vice versa. At the same time individual sovereignty – by which is meant the fundamental freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights. When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them. That is not to say that sovereignty is becoming less relevant but “it is the peoples’ sovereignty rather than the sovereign’s sovereignty.”¹⁴⁹

These outlooks challenge the utility of the Westphalian model and if the classic model of sovereignty is contradictory with the role of actual states in the twenty-first century, then that model should be rethought. Fragile and failed states have, by definition, undermined the principle of sovereignty based on absolute authority as established by the Peace of Westphalia, and therefore, sovereignty in the twenty-first century is better understood as a variable that entails the capacity of a state to meet its responsibilities, both internally and externally.

The Evolution of Sovereignty

The first modern revolution in the concept of sovereignty arose out of the 1648 Peace of Westphalia. However, even before this there were developments that are reflected in later times. In the fifteenth century there was a system of states in Italy but these did not persist and were subsumed by their French and Spanish conquerors into the European system, a system that was not based on sovereign states. Still formidable on much of the continent was the Holy Roman Empire, but it was not pre-eminent, nor ultimate, nor supreme in any particular territory.¹⁵⁰ German, Dutch and Italian princes who were under the authority of the emperor and the pope, also enjoyed ancient privileges that neither could challenge. By the early

¹⁴⁹ Ibid.

¹⁵⁰ Daniel Philpott, "A Brief History of Sovereignty," *Journal of International Affairs* 48, no. 2 (1995), 10.

sixteenth century Britain, France and Sweden looked very much like sovereign states, while princes in Germany and the Netherlands benefited from many of sovereignty's prerogatives.¹⁵¹

However, there was one matter that the emperors of the sixteenth century would not tolerate and that was dissent from the true faith of the true church in their lands. This led to religious wars in Central Europe that dragged on with no clear victor in sight until the Treaty of Augsburg in 1555. The treaty proclaimed that it ought to be up to the individual prince to determine the religion of his realm and, to the princes, this meant sovereignty.¹⁵² But Augsburg did not last and as a norm of sovereignty it was not practised. Mutual dissatisfaction with the Treaty's clauses and enmity between Catholics and Protestants, fuelled by the Counter Revolution, eventually resulted in the Thirty Years War (1618-1648).

It was not until the Peace of Westphalia in 1648 that something like the religious preference of the sovereign was accepted, respected and practised. This meant that a monarch was the supreme religious authority in his own country; that the Monarch not the Church had spiritual authority over the subjects of his kingdom, and that no outsider had the right to challenge the monarch's authority within his realm.¹⁵³ Additionally, it confirmed that territory was the key requirement for involvement in international politics. Finally, it gave monarchs the power to make alliances – allowing them the freedom of action outside their borders that is crucial to external sovereignty.¹⁵⁴

¹⁵¹ Ibid.

¹⁵² It included the famous formula *cuius regio, eius religio* ("whose the religion, his the religion") quoted in Ibid., 11.

¹⁵³ Torbjorn L Knutsen, *A History of International Relations Theory* (Manchester and New York: Manchester University Press, 1997), 85.

¹⁵⁴ Philpott, "A Brief History of Sovereignty." 12.

The final result of the Treaty of Westphalia is that it made sovereign statehood a norm, legitimate and practiced. It set new principles for three basics of sovereignty. First, it made the sovereign state the legitimate political entity. Second, it implied that the basic attribute for statehood, along with Christianity, was the existence of a government with control of its territory. Finally, the Peace removed all legitimate restrictions on a state's activities within its territory.¹⁵⁵ These core elements of state sovereignty were codified in the 1933 Montevideo Convention on the Rights and Duties of States. This convention included three main requirements: a permanent population, a defined territory, and a functioning government. Additionally, the post-1945 system of international order enshrined in the UN also inherited this basic model.¹⁵⁶

The norms of sovereignty that followed the Peace of Westphalia have survived , largely unchallenged, for over three hundred years. However, in recent times, particularly since the end of the Cold War, four challenges to state sovereignty have emerged.¹⁵⁷ First, there has been continuing demands for self-determination, particularly in more recent times, from minorities within existing states. The second challenge is from the broadening interpretation of threats to international peace and security: action by the states to deal with internal problems of peace and security. Gross violations of human rights and genocide in other states are contrary to the traditional norms of sovereignty but are increasingly accepted by the international community. The third challenge to the traditional concepts of state sovereignty is the incapacity of some states to effectively exercise their authority over their populations and territory, that is, their sovereignty is a legal fiction not matched by their actual political capacity. The final challenge to traditional state sovereignty, as detailed in Kofi Annan's "two concepts of

¹⁵⁵ Ibid.

¹⁵⁶ Weiss and Hubert, *The Responsibility to Protect: Research, Bibliography , Background.*

¹⁵⁷ Ibid.

sovereignty" speech, is the changing balance between states and people as the source of legitimacy and authority.

State Responsibility and Its Implications for Sovereignty

If the thesis developed in Chapter 1, that is, the capacity of a state to meet its responsibilities to provide political goods and services to its citizens is utilised to assess the success or failure of a state, then it is necessary to recognise that the current conceptions of sovereignty need to be re-evaluated. What is required is a conception of sovereignty based on a state's capacity to meet its responsibilities to its citizens which is both consistent with history and open to empirical analysis, that is, it needs to be recognised that increasingly what happens to a state's internal sovereignty has an impact on its external sovereignty.

The Westphalian sovereign state model, based on the principles of autonomy, territory, mutual recognition and control has been the basic concept for the major theoretical approaches to international relations, where it is either an analytical assumption or a constitutive norm, and has provided the benchmark for analysing variations to sovereignty.¹⁵⁸ Sovereignty is deeply embedded in world affairs as it provides an arrangement that is conducive to upholding certain values that are considered to be of fundamental importance. These include international order among states, membership and participation in the society of states, co-existence of political systems, legal equality of states, political freedom of states, and pluralism or respect for diversity of ways of life of different groups of people around the

¹⁵⁸ Stephen D. Krasner, "Rethinking the Sovereign State Model," *Review of International Studies* 27 (2001), 18.

world. Sovereignty acknowledges the value of international legal equality, that is, the equal status between independent states.¹⁵⁹

The alternative is some qualification of sovereignty in which states would be judged by the quality of their domestic political institutions. If that were the case, at the present time, not all states would be recognised. Some states would need to be subject to international supervision until they met the requirements of the international community.¹⁶⁰ However, it has been suggested that, in different historical eras, there is a standard or norm of sovereignty which is a result of a hegemonic form of state-society relations.¹⁶¹ Whether the norm around which the consensus is formed is hegemonic because it reflects the hegemon's own institutional structures, or because dominant states agree on a form that works best or most clearly serves their interests, it is clear that these norms change; for example traditional concepts such as respecting state's borders have been joined by democracy, free markets, and human rights.¹⁶²

Commonly, to attain sovereignty a state must demonstrate internal supremacy and external independence. That is, a sovereign state must be able to show political supremacy in its own territory over all other claimants to political authority and demonstrate actual independence from outside authority, not the supremacy of one state over others but the independence of one state from its peers.¹⁶³ Sovereignty, therefore, is the assumption that a

¹⁵⁹ Robert H. Jackson, "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape," *Political Studies* 47, no. 3 (1999), 434

¹⁶⁰ *Ibid.*, 456.

¹⁶¹ J. Ruggie, "Continuity and Transformation in the World Polity: Towards a Neorealist Synthesis," *World Politics* 35 (1983). Available from JSTOR; Address: <http://www.jstor.org.ezproxy.utas.edu.au/journals/00438871.html> (Accessed 5 April, 2005).

¹⁶² Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research," *International Studies Quarterly* 39 (1995), 228.

¹⁶³ Michael Ross Fowler and Julie Marie Bunck, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* (University Park: Pennsylvania State University Press, 1995), quoted in Daniel Philpott, "Usurping the Sovereignty of Sovereignty," *World Politics* 53, no. 2 (2001), 313.

government of a state is both supreme and independent.¹⁶⁴ Internal sovereignty is a fundamental authority relationship within states between rulers and ruled which is usually defined by a state's constitution, and external authority is a fundamental authority relationship between states which is defined by international law.¹⁶⁵ Ultimately it is the international community that determines the requirements of sovereignty and which political entities qualify as sovereign states.

Today the United Nations upholds the principle of sovereignty in Article 2, Section 1, of the Charter, while a corresponding norm of non-intervention is in Article 2, Section 7: "a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have a corresponding duty not to intervene in its internal affairs."¹⁶⁶ But sovereignty is more than a legal definition under the UN Charter, it is also the basic norm, *grundnorm*, upon which the international community of states ultimately depend.¹⁶⁷ If states were not sovereign they would have to rest on a different normative foundation, such as empire or religion, as was the case prior to 1648 and the Peace of Westphalia.

If defining sovereignty is difficult then determining just what sovereign state status confers in theory in modern international relations is the subject of intensive debate. The question is what privileges does sovereignty status confer? More specifically: Is sovereignty principally a legal idea or a political one? Do states by virtue of their sovereign status really possess a set of identical rights and obligations? Or, alternatively, does sovereignty in practice confer somewhat different rights and impose somewhat different

¹⁶⁴ Jackson, "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape." 433.

¹⁶⁵ Ibid.

¹⁶⁶ Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* 81, no. 6 (2002), 102.

¹⁶⁷ Jackson, "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape." 432.

duties upon satellites and superpowers, or upon tiny, newly independent states and large, populous powers?¹⁶⁸

These questions challenge the utility of the Westphalian model and if the classic model of sovereignty is contradictory with the privileges of actual states, then that model needs to be rethought. Either sovereignty is considered as something absolute that may be won or lost or as something variable that may be augmented or diminished.

From Westphalia to Responsibility

An absolute theory of applying sovereignty to international politics can be identified with the traditional Westphalian outlook that implies two characteristics of state sovereignty, that is, it may be viewed in terms that are both monolithic and indivisible. First, it is monolithic. A sovereign state enjoys all the privileges of sovereignty simultaneously: it has people, government, and territory, is internally supreme, and so on.¹⁶⁹ Second, state sovereignty is indivisible: that is, sovereignty is possessed in full or not at all.¹⁷⁰ If conceived in these terms sovereignty is absolute. Sovereignty must be present or absent. No state can be, say, 55 percent sovereign. Regardless of their population size, their wealth, or military power, sovereign states benefit from the same legal privileges. Sovereignty is essentially a matter of reciprocity. Each sovereign state, no matter how large or small, has the same rights and duties as all other sovereign states in the same era.

Alternatively, a variable theory of sovereignty allows a rethink on the question of sovereignty by scholars who view sovereignty not in absolute terms, but rather in variable terms, as a collection of attributes and

¹⁶⁸ Fowler and Bunck, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty*. 312

¹⁶⁹ Philpott, "Usurping the Sovereignty of Sovereignty." 313

¹⁷⁰ Ibid.

corresponding rights and duties.¹⁷¹ In this model sovereignty exists in degrees, some states possessing a certain array of attributes, while others possess another set of attributes. While a few powerful states will enjoy absolute sovereignty most, by contrast, will find their sovereignty variable, evolving or truncated.¹⁷² When this concept of sovereignty is applied to international relations theory it enables each state's array of attributes to be examined empirically to determine the extent of that state's rights and obligations. In this theory, sovereignty is not something that must be possessed in full or not at all, rather, it is accepted that some states can be more sovereign than others.¹⁷³

In evaluating the concept of responsible sovereignty it is necessary to acknowledge that either of the above theories could accommodate this concept. Within the absolute theory of sovereignty once a certain level of responsibilities or capabilities is crossed, sovereignty is achieved. Conversely, at an identifiable point, the failure for a state to meet a certain level of responsibilities would mean the complete loss of sovereignty. However, as the model of a state's capacity to meet its responsibilities to its citizens was developed based on variable factors where states could be classified on a continuum from strong to failed, then any concept of responsible sovereignty should also allow for the same degree of variability, so that sovereignty is not considered absolute but reflects the fact that some states can be more, or less, sovereign than others.

From the end of World War II to the end of the Cold War the following definition of sovereignty would have been generally accepted by most

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Fowler and Bunck, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty*, 313.

scholars. Developed from traditional Westphalian concepts, it also follows the international law definition with the addition of a recognition criterion;

sovereignty is the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory.¹⁷⁴

In this definition the key elements are recognition, the state, authority, coercion and territory. Three of these elements require further discussion. Firstly, recognition is not an attribute of the state but something that is attributed to a state by other states or state rulers. Additionally, each state in the modern sovereign system is recognised as being juridically equal, despite differences in size, power capabilities and empirical statehood.¹⁷⁵ Secondly, with sovereignty, states claim, and are recognised as having, the authority to define the political being which is subject to state coercion. It is important to make a distinction between the terms authority and control: authority is the exclusive right to make rules whereas control is the capability of enforcing those rules.¹⁷⁶ Finally, coercion is a key to sovereignty because, ultimately, the exercise of authority depends upon it.¹⁷⁷ If a state's policing function is central to their sovereignty, and if state control over coercion is challenged or eroded by internal or external actors, then this must have deleterious affect on that state's sovereignty.

¹⁷⁴ Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research." 219.

¹⁷⁵ Robert H. Jackson and Carl G. Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood," *World Politics* 35, no. 1 (1982), 13.

¹⁷⁶ Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research." 223.

¹⁷⁷ Peter M. Blau, "Critical Remarks on Weber's Theory of Authority," *American Political Science Review* 57 (1963), 307

Since the end of the Cold War there have been further attempts to refine the definition of sovereignty. Krasner has identified four different meanings of sovereignty in contemporary usage.¹⁷⁸ These are:

- Interdependence Sovereignty which is the ability of states to control movement across their borders.
- Domestic sovereignty which refers to the authority structures within states and the ability of these structures to effectively regulate behaviour. The acceptance or recognition of a given authority structure is one aspect of domestic sovereignty. The other is the level of control that officials can actually exercise. Well ordered domestic polities have both legitimate and effective authority structures. Failed states have neither.
- Westphalian sovereignty refers to the exclusion of external sources of authority both *de jure* and *de facto*.¹⁷⁹
- International legal authority refers to mutual recognition. The basic rule of international legal sovereignty is that recognition is accorded to juridically independent territorial entities. States in the international system are free and equal.

Fowler and Bunck have similar criteria which incorporate three of Krasner's four definitions. They are:

- A sovereign state must possess *de facto* internal supremacy, that is, there is a final and absolute authority within the political community.
- Sovereignty implies *de facto* external independence; that is, no outsider exercises control within its territory.

¹⁷⁸ Stephen D. Krasner, *Sovereignty: Organised Hypocrisy* (Electronic Book) (Princeton University Press, 1999. Available from <http://www.amazon.com> (Accessed 25 April 2003), and Krasner, "Rethinking the Sovereign State Model." 19-21. (Accessed 25 April 2003).

¹⁷⁹ In a later paper, Krasner, "Rethinking the Sovereign State Model." Krasner replaces the term Westphalian Sovereignty with Vattelien Sovereignty. He argues that the principle of autonomy did not have much to do with the 1648 treaty and that the principle that rulers should not intervene in the domestic affairs of other states was actually introduced by two international legal theorists in the second half of the eighteenth century, Emmerich de Vattel and Christian Wolff. However, this paper maintains the term Westphalian Sovereignty as it is more recognisable.

- A sovereign state's constitutional independence is recognised by other states, that is, *de jure* independence is essential.¹⁸⁰

The rules, institutions, and practices that are associated with these definitions of sovereignty are neither logically nor empirically linked in some organic whole. Sovereignty is best understood as a basket of goods that do not necessarily go together in that it refers both to practices or activities and to rules or principles.¹⁸¹ For example, a state may have international legal sovereignty but not Westphalian sovereignty such as was the case with the eastern European states during the Cold War. The Congo in the late 1990s lacked both effective domestic sovereignty understood as control or authority, and Westphalian sovereignty (several foreign states were operating within its borders) but still maintained its international legal sovereignty. At the same time Somalia had little interdependence sovereignty but, as no other states attempted to influence its domestic authority structures, it maintained its Westphalian sovereignty.

Any concept of responsible sovereignty needs to recognise the duality of sovereignty where there is an internal dimension based on the state and its relationship with its citizens, and an external dimension that administers the relationships amongst states. Indeed in international human rights law, in UN practice, and in state practice itself, it is now commonly accepted that sovereignty implies this dual responsibility: internally to respect the basic rights of all the citizens within the state, and externally, to respect the sovereignty of other states.¹⁸²

While many of these responsibilities are now codified in international law any definition of sovereignty must also take account of the norms of

¹⁸⁰ Fowler and Bunck, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty*, 311.

¹⁸¹ Krasner, "Rethinking the Sovereign State Model." 21.

¹⁸² Evans and Sahnoun, "The Responsibility to Protect." 101.

sovereignty developed over the last three and a half centuries. Therefore, any definition that incorporates sovereignty as responsibility has both a juridical (*de jure*) component (which could be considered the ideal type) and an empirical (*de facto*) component (which reflects the harsh Westphalian realities of the real world) to both the internal and external dimensions of sovereignty (Figure 3).

	Juridical Sovereignty	Empirical Sovereignty
External Sovereignty	Montevideo Convention & United Nations Charter	International Recognition
Internal Sovereignty	International Human Rights Law	Domestic Authority

Figure 3. Responsible Sovereignty Matrix

Juridical sovereignty reflects the growing body of international law that not only governs relations between states, but also dictates the manner in which states are obliged to treat their own citizens. External juridical sovereignty is based on two elements. First, the Montevideo Convention on Rights and Duties of States (1933) describes the state as a legal person, recognised by international law, with the following attributes: (a) a defined territory, (b) a permanent population, (c) an effective government, and (d) independence, or the right to “enter into relations with other states”¹⁸³ Second the United Nations Charter also upholds the principle of sovereignty where a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have a corresponding duty not to intervene in its internal affairs. Internal juridical sovereignty reflects the development of a large body of human rights law

¹⁸³ Jackson and Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood." 3.

since the formation of the United Nations. The UN Declaration of Human Rights (1948), while not law, has provided the basis for subsequent international human rights laws such as the Convention on the Prevention of the Crime of Genocide (1948), the International Covenant on Civil and Political Rights (1966), The Covenant on Economic, Social and Cultural Rights (1966) which together have provided a blueprint for the manner in which a state should treat its citizens.

If juridical sovereignty is relatively straightforward, empirical sovereignty is more nebulous. External empirical sovereignty relies on the recognition by other states of the right of a state to exist, based on the norms that have developed from the Peace of Westphalia. However, in the twenty-first century this recognition may be withdrawn by some members of the international community if the state is perceived to be in a gross contravention of humanitarian law. Internal empirical sovereignty is based on authority which can be considered as the domestic authority to govern. Ideally this authority is achieved through democratic principles but it also recognises that, in many states, the authority is vested in personal leaders who operate in an arbitrary and autocratic manner by means of commands, edicts, decrees and so forth.

This model of sovereignty reflects the changing nature of sovereignty which United Nations Secretary General Kofi Annan highlighted when he said that “sovereignty implies responsibility not just power”.¹⁸⁴ It is very different from the classical approach which recognises the authority of the state to intervene coercively in activities in its territory without interference from external actors as it emphasises that sovereignty has a juridical dimension based on international law (responsibilities) while still acknowledging the empirical dimension of sovereignty based on Westphalian norms (rights).

¹⁸⁴ In the 35th Ditchley Foundation Lecture, 26 June, 1998.

Qualifying Sovereignty

The Secretary General's assessment of changes to our traditional understanding of sovereignty did not come out of the blue. As this thesis will show in later chapters, there has been an evolution toward this position based, in part, on changing state practice. However, there have been scholarly pressures in this direction as well.

State failure should be considered as a relative concept that can be evaluated according to the level of reduction in its internal sovereignty based on the ability of a state to provide political goods to its citizens. In this respect state failure is an 'inside' phenomenon that is not formally subject to outside control.¹⁸⁵ That is not to say that outsiders cannot influence events, but in the absence of a social-political unit there would be no candidate for state failure. The major contradiction that arises when state failure is perceived as a loss of internal sovereignty is the continued existence of a formal external juridical sovereignty. The classical examination of this phenomenon is Robert Jackson's analysis of quasi-states.¹⁸⁶

Jackson created the term quasi-state to describe ex-colonial states that had been internationally franchised and possessed the same external rights and responsibilities as all other sovereign states, that is, juridical statehood derived from a right of self-determination or negative sovereignty. Negative sovereignty is defined as the freedom from outside interference: a formal-legal condition which corresponds with external juridical sovereignty. However, at the same time, many lacked the institutional features of sovereign states as defined by classical international law, that is, they had

¹⁸⁵ Georg Sorensen, *Sovereignty, Security, and State Failure* (University of Aarhus, Denmark, 2001). Available from http://www.ippu.edu/failed_states/2001/paperSorensen.pdf. (Accessed 3 March, 2003).

¹⁸⁶ Jackson, *Quasi States: Sovereignty, International Relations, and the Third World*.

limited empirical statehood or positive sovereignty.¹⁸⁷ Positive sovereignty is a term used to describe established states which exercise effective dominion over their peoples and territories, that is, internal empirical sovereignty. As used by Jackson, negative sovereignty related to quasi-states primarily evolving from decolonisation: it was the distinctive liberty acquired by former colonies.¹⁸⁸ However, it is principally those ex-colonial states that are now the candidates for failure so Jackson's concept of quasi-states remains a useful tool in analysing the relationship between fragile and failed states and sovereignty.

Jackson's conception of quasi state's highlights a key question: how long can states retain their independence in the international system while they remain dependent on that same international community for support? What is clear is that, left to their own devices, fragile and failed states will not fix themselves because they have limited administrative capacity, particularly with regard to maintaining internal security.¹⁸⁹ Although political leaders in both powerful and weak states have been reluctant to challenge the conventional norms of external sovereignty there are three policy options that are available to assist in repairing badly governed states: governance assistance, transitional administration and shared sovereignty.¹⁹⁰

Governance assistance can be provided by other states, NGOs or IGOs. For example, as a reaction to the debt crisis in much of the third world in the 1980s, the International Monetary Fund (IMF) and the World Bank took on significant economic responsibility in states through the imposition of Structural Adjustment Programs (SAPs). Additional inroads into the

¹⁸⁷ Ibid. 26, and Robert H. Jackson, "Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World," *International Organization* 41, no. 4 (1987), 529.

¹⁸⁸ Jackson, *Quasi States: Sovereignty, International Relations, and the Third World*. 26.

¹⁸⁹ Stephan D Krasner, "Sharing Sovereignty: New Institutions for Collapsed and Failing States," *International Security* 29, no. 2 (2004), 86.

¹⁹⁰ Ibid. 97-106.

sovereignty of these states has been the increasing influence of NGOs which have taken on a range of issues (human rights, famine, disease, environmental protection) in ways which involve limitations on the power of states.¹⁹¹ Following the collapse of the Soviet Union in 1989 the World Bank began to accentuate the need for more emphasis on social welfare in combination with liberalising reforms. In the 1990s the focus shifted to reform of the state itself: efficient and democratic states were considered indispensable for economic development. The Millennium Development Goals, which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed by all the world's countries and all the world's leading development institutions. They have galvanized unprecedented efforts to meet the needs of the world's poorest. All this has led to demands for democratisation and good governance.¹⁹²

Generally the interventions outlined above are of the negotiated variety, that is, they require the consent (even if it is coerced) of the governments exposed to the measures but humanitarian intervention can take place without such consent. The one recognised alternative to conventional sovereignty is a UN-authorized transitional administration, which is a viable option when a state fails and both its external juridical and empirical sovereignty have been severely compromised. The scope of a UN-authorized transitional administration can range from the full assumption of executive authority by the UN as occurred, for example in East Timor, to more modest efforts involving the monitoring of peace agreements, as was the case in Guatemala.¹⁹³ Other states that are currently subject to, or have had,

¹⁹¹ Christopher Clapham, "Degrees of Statehood," *Review of International Studies* 24 (1998), 149.

¹⁹² Sorensen, *Sovereignty, Security, and State Failure*. 4.

¹⁹³ Krasner, "Sharing Sovereignty: New Institutions for Collapsed and Failing States." 98.

transitional administrations to one extent or another are Cambodia, Liberia, Haiti, Afghanistan, Bosnia, Sierra Leone, and DR Congo.

The third option to assist fragile and failed states is shared sovereignty which would involve external states or institutions assuming some authority in the target state for a defined period of time. A shared sovereignty arrangement, such as that between the Solomon Islands, Australia and other Pacific States, would be legitimated by agreements signed between the parties.¹⁹⁴ This is a case of a state using its external juridical sovereignty to compromise its internal empirical sovereignty in which one core element of sovereignty – voluntary agreements – would be preserved, while another – the principle of autonomy – would be violated.¹⁹⁵

There is a developing consensus, at least amongst developed states, on the legitimacy of humanitarian intervention in extreme circumstances, even in the absence of Security Council authorisation. The events of September 11, 2001 have had a further direct impact on fragile and failed states that are considered a potential risk. For instance, under the guise of the Patriot Act the United States is prepared to pre-emptively intervene in states that it deems a threat. Additionally, hegemonic states or groups of states, either unilaterally or under the authority of the United Nations, are prepared to intervene in fragile and failed states that are perceived as a threat to the international community.

It would be preferable that, if the external sovereignty of a state is to be limited when there is a reduction in internal sovereignty, that there be a formal mechanism for assisting these states. In extreme cases, as discussed above, the UN may establish a mission to assist a fragile or failed state. It has

¹⁹⁴ In this case the Solomon Islands also passed an Act through parliament authorizing the arrangement.

¹⁹⁵ Krasner, "Sharing Sovereignty: New Institutions for Collapsed and Failing States." 108

been suggested that the ability of the international community to respond may be enhanced by the adoption of the notion of the “decertification of states”.¹⁹⁶ The United States already decertifies countries, effectively reducing the eligibility for aid for those countries that are not attempting to stop the production and trans-shipment of narcotics. Similarly, the international community, through various financial institutions effectively decertifies states involved in money laundering. Decertification would provide an alternative for states that have failed and could accordingly provide a “halfway house” for states while the international community assists in reconstituting their sovereignty.¹⁹⁷

Helman and Ratner proposed a model involving three levels of assistance: governance assistance, delegation of governmental authority and direct UN trusteeship.¹⁹⁸ In this model, in weak states where the target state still maintains some type of minimal government structure, a form of governance assistance would be arranged in which the UN would work with the existing government to address the state’s most pressing problems, but the final authority would remain in the hands of the state. Where states have already failed, the state could delegate certain government functions to the UN. In failed states where no modicum of authority exists, the UN should engage in a direct trusteeship in which all government authority is ceded to the UN.

Any limitations of sovereignty would require action by international institutions, in particular, the United Nations, but it is highly unlikely that either of these concepts would be accepted by the international community at this time. As a result, it is likely that the current contradictory state of affairs will continue. Many fragile and failed states will lack internal sovereignty

¹⁹⁶ Jeffrey Herbst, “Responding to State Failure,” *International Security* 21, no. 3 (1996), 142.

¹⁹⁷ Ibid.

¹⁹⁸ Gerald B. Helman and Steven R. Ratner, “Saving Failed States,” *Foreign Policy* 89, no. 4 (1993). Available from ProQuest; Address: <http://proquest.umi.com> (Accessed 25 March, 2003).

but maintain their external juridical sovereignty even when their external empirical sovereignty has been compromised. Indeed it appears that many failing states will, for the foreseeable future, rely on assistance from the international community to maintain their sovereignty, both internal and external.

Conclusion

Since the Peace of Westphalia in 1648 until the second-half of the twentieth century sovereignty has been considered a right, that is, a country's internal affairs were its own business and other states had no right to intervene unless the state threatens them. These norms were codified in the United Nations Charter that began to formalise the state system after World War II. However, the rapid expansion in the number of states in the world following decolonisation, provoked challenges to this conception of sovereignty. Many of these newly created states lacked the capacity to support themselves without external assistance, or to contribute in a meaningful manner to the international community, but were legally recognised.

Additionally, traditional Westphalian sovereignty was challenged by the changing balance between states and people as the source of legitimacy and authority. Used to support the debate on humanitarian intervention Annan's "two concepts of sovereignty" argues that states are instruments at the service of their peoples, and not vice versa. These rights and freedoms of the peoples are enshrined in the Charter of the UN and subsequent international treaties.

The problem of fragile and failed states has further undermined the principle of sovereignty based on absolute authority as established by the Treaty of Westphalia as they fail to meet either their external or internal sovereign responsibilities. Therefore, sovereignty in the twenty-first century is better

understood as a variable that entails the capacity of a state to meet its responsibilities and exercise its authority, both internally and externally. The concept of responsible sovereignty enables a state's sovereignty to be analysed, taking account of both the traditional Westphalian norms and current international law, and to be utilised in establishing a model of international humanitarian intervention in the twenty-first century.

Justifying Humanitarian Intervention

Humanitarian intervention lies at a fault line in international relations between the principles of international law (in particular the issue of state sovereignty and the doctrine of non-intervention) on the one hand, and issues of morality and the protection of human rights on the other. Traditionally, it has been argued that moral attitudes are peripheral to international law which is a foundation of the state system, and that the legal instruments and principles of that system do not, in fact, authorise intervention on humanitarian grounds. However, in the post-Cold War era a new normative dimension of intervention has developed by way of United Nations authorised interventions in the defence of human rights. In particular, it suggests that intervention is justifiable to either protect civilian populations threatened by civil war, and to protect relief supplies and the personnel delivering them, or, more strongly, to coerce states involved in civil conflict to cease their violations of the individual and group rights of those living under their authority.¹⁹⁹

There are several approaches to a discussion on the justifications for intervention including the legal, moral, and political. As noted above the post-Cold War discussion of intervention has been dominated by the first two of these perspectives. Firstly, in legal analysis the key issue is the extent that international law permits the violation of the codified and customary rights of sovereign states in defence of humanitarian interventions. In the second case the focus is on the moral principles that may serve as a legitimate basis for interference in the internal affairs of states. Finally, while it is unlikely that a political perspective can be used as justification for a

¹⁹⁹ MacFarlane, *Intervention in Contemporary World Politics.*, 34.

humanitarian intervention, it is necessary to recognise that the motivations underlying the intervention may be self-interested or in pursuit of particular or general normative principles. Moreover, the selectivity of humanitarian intervention in humanitarian crises since the end of the Cold War suggests that public opinion and domestic politics play an important role in states' decisions of whether to intervene or not.²⁰⁰

Legal Justifications

International law is not like domestic law and is often misunderstood because of this comparison. As a result there are a number of problems in applying domestic methodologies to the international system because, first, there is no single authoritative lawmaker in international relations; second, there is no authoritative judge that sits above the sovereign state and interprets the law; third, custom is as an important component of international law as written treaties, and it is difficult to interpret custom objectively; and finally, international law is underdeveloped.²⁰¹

There are two principal sources of international law. First, treaties and conventions are quasi-contractual written instruments between two or more states. Treaties are interpreted on either the basis of agreed rules set out in the treaty itself or under the 1969 Vienna Convention on the Law of Treaties which is generally recognised as the authoritative guide to treaty law and practice.²⁰² The second source is customary international law which is an informal, unwritten body of rules that derive from the practice of states together with *opinion juris*, that is, a belief by governments that the practice is

²⁰⁰ Ibid., 35.

²⁰¹ Alex J. Bellamy, "Ethics and Intervention: The 'Humanitarian Exception' and the Problem of Abuse in the Case of Iraq," *Journal of Peace Research* 41, no. 2 (2004), 133.

²⁰² Michael Byers and Simon Chesterman, "Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (New York: Cambridge University Press, 2003), 179.

required by law or is at least of relevance to its ongoing evolution.²⁰³ Generally a provision of an unambiguous treaty will prevail over a conflicting rule of customary international law. Additionally, one treaty, the United Nations Charter, states explicitly that it prevails over all other treaties.

A further complication is the existence of a few non-treaty peremptory rules (referred to as *jus cogens*) that have the capability to override contradictory non-peremptory rules. Generally these peremptory rules are considered to be customary in origin and the result of a similar development process to that of customary international law.²⁰⁴ This section analyses the extent to which coercive military humanitarian intervention can be justified under the United Nations Charter and customary law.

The use of coercive military (forcible) humanitarian intervention requires discussion of the UN rules governing the use of force. Chapter I, Article 2(4) of the United Nations Charter states: "All members shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."²⁰⁵

Not only is this prohibition binding on all members of the United Nations, but also on all subjects of international law as a peremptory legal norm.²⁰⁶ This prohibition is reinforced by a ban against UN intervention in the domestic jurisdiction of any state as set out in Article 2(7): "Nothing

²⁰³ Ibid.

²⁰⁴ Ibid., 180.

²⁰⁵ *Charter of the United Nations (Entered into Force 24 October 1945)*. Available from <http://www.un.org/aboutun/charter/>. (Accessed 25 April, 2002).

²⁰⁶ Mary Ellen O'Connell, "The UN, NATO, and International Law after Kosovo," *Human Rights Quarterly* 22, no. 1 (2000).. Available from; Project Muse Address: http://muse.uq.edu.au.ezproxy.utas.edu.au/journals/human_rights_quarterly/ (Accessed 24 May, 2004).

contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”²⁰⁷ The key to Council’s authority to use or authorise force, is located in Article 39: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”²⁰⁸ Once the Council has made a finding under Article 39 it may authorise the use of air, sea, or land forces under Article 42.

Should the Security Council consider that measures provided for in Article 41 are inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.²⁰⁹ In addition to the above provisions, Chapter VII Article 51 permits the use of force in individual or collective self-defence, while Chapter VII, Article 53, permits the Security Council to use regional arrangements as appropriate or to authorise enforcement action by such arrangements.

This position on the inadmissibility of intervention, except in strictly prescribed circumstances has been continually reinforced by the General Assembly of the United Nations. Its 1965 Declaration on the Inadmissibility of Intervention stated that “no state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or

²⁰⁷ *Charter of the United Nations (Entered into Force 24 October 1945).*

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

external affairs of any state". In the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, the General Assembly again interpreted the Charter as meaning "no state or group of states has the right to intervene in any form or for any reason whatsoever in the internal or external affairs of any state".²¹⁰ The 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States and the 1993 review of the implementation of the Declaration on the Inadmissibility of Intervention on the Strengthening of International Security both again called upon states to refrain from the use of force, aggression, intervention and interference and that they take further steps aimed at promoting the ideal of collective security as envisioned in the Charter.²¹¹ The Assembly has, according to Michael Glennon, constructed a rule of invalidity with respect to intervention.²¹² The rule admits no exception. Thus, there is a line taken by the UN General Assembly that maintains that intervention is always unlawful, regardless of the state undertaking intervention, and regardless of motives or effects.

Although humanitarian intervention is not specifically mentioned it is generally, but not universally, agreed that the Security Council has the authority to conduct or authorise humanitarian intervention under Chapter VII of the Charter. The foundation of the Security Council's authority is Article 39 which confers on the Council the responsibility to "determine the existence of any threat to the peace, breach of peace or act of aggression, and shall make recommendations, or decide what measures are to be taken in accordance with Articles 41 and 42, to maintain and restore international peace and security."²¹³ Since the end of the Cold War the Security Council has interpreted the term "threat to peace" in broad terms. It is recognised

²¹⁰ Michael Glennon, *Limits of Law, Prerogatives of Power: Interventionism after Kosovo* (New York: Palgrave, 2001), 21.

²¹¹ Ibid.

²¹² Ibid.

²¹³ *Charter of the United Nations (Entered into Force 24 October 1945)*.

that humanitarian crises, particularly in failed states, can have consequences outside their own borders. Some question whether humanitarian crises can be considered threats to peace, but as Article 39 states “the Security Council shall determine” the existence of a threat to peace so it can be argued that Article 39 gives the Security Council the authority to determine exactly what is a threat to peace.²¹⁴

As the international community has not criticised or opposed humanitarian interventions under Chapter VII authorisations, they are arguably lawful modifications of the treaty through practice. The Vienna Convention on the Law of Treaties provides that the interpretation of a treaty may be influenced by practice.²¹⁵ Today, even without precise textual authority, it would seem that the Security Council can authorise humanitarian intervention by either a coalition of willing forces or by regional organisations.²¹⁶

The only section of the Charter that would appear to rule out humanitarian intervention is Article 2(7) that states that the Charter does not authorise the United Nations “to intervene in matters that are essentially within the domestic jurisdiction of any state.” However, Article 2(7) also has a proviso: “This non-interventionist principle shall not prejudice the application of enforcement measures under Chapter VII” which is generally taken to mean that the Security Council’s authority under Chapter VII is not limited by the domestic jurisdiction proviso. Additionally, since the founding of the United Nations there has been the development of a considerable body of human rights law, for example, the UN Declaration of Human Rights (1948), the Convention on the Prevention of the Crime of Genocide (1948), the International Covenant on Civil and Political Rights (1966), and the Covenant

²¹⁴ Mark S Stein, “Unauthorized Humanitarian Intervention,” *Social Philosophy & Policy* 21, no. 1 (2004), 17.

²¹⁵ O’Connell, “The UN, NATO, and International Law after Kosovo.”

²¹⁶ Ibid.

on Economic, Social, and Cultural Rights (1966). Mark Stein argues, on this ground, that human rights law removes humanitarian intervention outside the prohibition of Article 2(7) and, as a result, the Security Council's authority under Chapter VII would be unimpaired.²¹⁷

If humanitarian intervention is justified when authorised by the Security Council its status, when not authorised, is considerably more dubious. Article 2(4) the Charter's prohibition of the threat or use of force in international relations states "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations". Some supporters of humanitarian intervention claim that it is permitted under this Article as, rather than imposing a general prohibition, it is actually three specific prohibitions.²¹⁸

Firstly, humanitarian intervention is permitted under the Charter if it does not constitute the use of force against territorial integrity, that is, 'territorial integrity' is subject to a narrow definition and a state only violates the territory of another state if it actually take possession of part of the second state's territory.²¹⁹ Secondly, the term political independence is contested particularly when the intervention is carried out in the context of a pro-democratic intervention. In these cases supporters of humanitarian intervention would argue that the restoration or installation of democracy increases the political independence of a state.²²⁰ Finally, Article I of the Charter lists the purposes of the United Nations and the first-listed purpose is to "maintain international peace and security." Article 1(3) also cites the promotion of human rights as a purpose of the UN. Therefore, intervention

²¹⁷ Stein, "Unauthorized Humanitarian Intervention." 18.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ W. Michael Reisman, "Haiti and the Validity of International Action," *American Journal of International Law* 89, no. 1 (1995), 83.

for humanitarian purposes would not seem to be a breach of the Charter if Article 2(4) is interpreted in this manner.²²¹

On the other hand, opponents of the above liberal interpretation of Article 2(4), such as Bruno Simma, claim that, on the basis of both a teleological and historical interpretation, the prohibition enacted in the article is intended to be of a comprehensive nature.²²² In this case the phrase "...or in any other manner inconsistent..." is not designed not to allow exceptions, but rather to make the prohibition unassailable. Based on contemporary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (Articles 53 and 64), Simma claims that the prohibition put forward in Article 2(4) is part of *jus cogens*; that is, it is accepted and recognised by the international community as a norm from which no derogation is permitted.²²³

Although the position of a humanitarian intervention, unauthorised by the Security Council, is dubious at best, its status may also be effected by the somewhat mysterious body of law known as customary international law. Recent practices by states in humanitarian intervention may be foreshadowing the development of new rules of customary international law in this area.²²⁴ The American Law Institute in its Restatement of Foreign Relations Law defines customary international law as the general and consistent practices of states that they follow from a sense of legal obligation.²²⁵ The definition contains two elements: there must be a widespread and uniform practice of states (state practice), and states must

²²¹ Stein, "Unauthorized Humanitarian Intervention." 19.

²²² Bruno Simma, *NATO, the UN, and the Use of Force: Legal Aspects* (1999); available from <http://www.ejil.org/journal/Vol10/No1/ab1.html>. (Accessed 31 March, 2005).

²²³ Ibid.

²²⁴ Bartram S. Brown, "Barely Borders," *Harvard International Review* 26, no. 1 (2004). Available from ProQuest; Address: <http://proquest.umi.com/> (Accessed 24 June, 2005).

²²⁵ Quoted in Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (New York: Oxford University Press, 2005). 23.

engage in the practice out of a sense of legal obligation (often referred to as *opinio juris*).²²⁶

The development of customary international law has long been a contentious subject between states. The meanings of both state practice and legal obligation have been contested. One position is that only physical acts count as state practice which means that any state wanting to support or oppose the development, or change, of a rule must engage in an act, and that statements or assertions do not count.²²⁷ Opponents of that position argue that physical acts would themselves be violations of customary international law, in so far as they would seem to require violations of that law, that is opposition to existing laws constitutes infringements of those rules which statements of opposition do not.²²⁸

There is little agreement about what, apart from physical action, constitutes state practice. Four different actions can be considered. First, the least controversial source is policy statements, legislation and diplomatic correspondence. Second treaties, particularly multilateral but also bilateral, are often utilised as evidence of international customary law. Third, the writings of jurists are a common source of customary law. Finally, United Nations General Assembly resolutions and other non-binding statements and resolutions by multilateral organisations are often viewed as a source of international customary law.²²⁹

In addition to disagreement about what acts are relevant there is also debate as to how widespread and uniform state practice must be. In theory, the practice should be general, in that all or almost all of the states of the world

²²⁶ Ibid.

²²⁷ Byers and Chesterman, "Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law." 188.

²²⁸ Ibid.

²²⁹ Goldsmith and Posner, *The Limits of International Law*. 23.

engage in it. In practice it is impossible to determine whether all states would engage in the practice, so in effect, international customary law is often based on a highly selective survey of state practice that includes only great powers and interested states.²³⁰ The conception that international customary law is being made by a limited group of states is of concern to many, but it is true that powerful states have always had a disproportionate influence on customary law-making, mainly because they have a broader range of interests and consequently engage in more practice than other states.²³¹

It is sometimes argued that a new international customary norm of humanitarian intervention has been created as an additional exception to the use of force under the UN Charter. As discussed above customary international law allows for the creation of such a norm through the evolution of consistent and widespread practice when accompanied by the necessary *opinio juris*.²³² However, the number of non-authorised cases of humanitarian intervention are small and it is more likely that any change in international law caused by these humanitarian interventions will be through the UN Charter rather than through international customary law. That said, it is still possible that states will intervene without UN authority, if necessary, in cases of extreme humanitarian need.

Moral Justifications

Until the end of the Cold War it was rare for ethical and moral concerns to reckon in a state's foreign policy, particularly when it involved national security issues. However, international responses to the humanitarian crises of the last fifteen years have demonstrated that the international community

²³⁰ Ibid. 24.

²³¹ Byers and Chesterman, "Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law." 190.

²³² Simon Chesterman, "Humanitarian Intervention in Afghanistan," in *Humanitarian Intervention and International Relations*, ed. Jennifer M Welsh (Oxford: Oxford University Press, 2004), 169.

has a range of alternative actions that reflect a hierarchy of values and that, even without a universally accepted code of morality, it can engage in a dialogue on the ethics of intervention. Fundamentally, an ethical judgement is one that can plausibly take “a universal point of view” and believes that “the notion of morals applies some sentiment common to all mankind, which recommends the same object to general approbation.”²³³ Despite lengthy debates about the merits and demerits of relativist thought, there exists a broad international consensus around the kinds of behaviour that might lead to intervention. While humanitarian intervention is an example of the new power of morality in international affairs that has arisen over the last fifteen years, people have been thinking about the morality of war for at least three thousand years. The ancient Egyptians and the fourth century BC Chinese military strategist Sun Tzu set out rules on how and why to begin wars and how those wars should be fought.²³⁴

Natural Law developed from the common threads that characterises traditional Western Greco-Roman and Christian thought and can be seen as a set of values, based on what are assumed to be the permanent characteristics of human nature, that can serve as a standard for evaluating conduct.²³⁵ It was first elaborated by the ancient Greek philosophers in the 6th century BC, when Heraclitus spoke of a common wisdom that pervades the whole universe and that all human laws were nourished by one, the divine. However, it was the Stoics that provided the most complete classical formulation of natural law. They argued that the universe is governed by reason, or rational principle, and as all humans have reason within them they

²³³ William K. Frankena, *Ethics: An Introduction* (Englewood Cliffs: Prentice-Hall, 1973). 24.

²³⁴ Leslie H. Gelb and Justine A. Rosenthal, "The Rise of Ethics in Foreign Policy," *Foreign Affairs* 82, no. 3 (2003). Available from ProQuest; Address: <http://proquest.umi.com/> (Accessed 24 March, 2005).

²³⁵ Howard M. Hensel, "Theocentric Natural Law and the Norms of the Global Community," in *Sovereignty and the Global Community: The Quest for Order in the International System*, ed. Howard M. Hensel (Aldershot: Ashgate Publishing, 2004)., 24.

can therefore know and obey its law.²³⁶ Humans will not necessarily obey the law as they have the faculty of choice (free will), but if they act in accordance with reason, they will be following nature.²³⁷ This doctrine was popularised among the Romans in the 1st century BC orator by Cicero, who characterised natural law in his *De Republica* as:

There is in fact a true law - namely, right reason - which is in accordance with nature, applies to all men, and is unchangeable and eternal. By its commands this law summons men to performance of their duties; by its prohibitions it restrains them from doing wrong. Its commands and prohibitions always influence good men, but are without effect on the bad. To invalidate this law by human legislation is never morally right, nor is it permissible ever to restrict its operation, and to annul it wholly is impossible.....The man who will not obey it will abandon his better self, and, in denying the true nature of man, will thereby suffer the severest penalties, though he has escaped all the other consequences which men call punishment.²³⁸

Christians also found the natural law doctrine compatible with their beliefs. The teaching of St. Thomas Aquinas(1225-74) on the natural law is the most widely known. St. Thomas believed in the existence of natural law, which he viewed as part of eternal law which he saw as bestowing on all beings the inclination to those actions and aims that are proper to them. Consequently, natural law provided a gauge against which the conduct of free, rational beings must be judged as well as a moral guide to be obeyed.²³⁹ Like the Stoics and the Romans, St. Thomas believed that a positive law that violated natural law was not a true law.

In the seventeenth century, with the increasing secularisation of society, there was a move away from the dominant theocentric perspective on

²³⁶ Johnathon Dolhenty, *An Overview of Natural Law Theory*, available from <http://radicalacademy.com/philnaturallaw.htm>. (Accessed 27 May, 2005)

²³⁷ Ibid.

²³⁸ Hensel, "Theocentric Natural Law and the Norms of the Global Community." 25.

²³⁹ Ibid.

natural law towards a more anthropocentric school of natural law influenced by the rationalism of the enlightenment. The Dutch jurist Hugo Grotius (1583-1645) is often considered the founder of the modern theory of natural law. His definition of natural law as that body of rules which can be discovered by the use of reason is traditional but, in raising the hypothetical argument that his law would have validity even if there were no God or if the affairs of human beings were of no concern to God, he effected a separation from theological presuppositions and prepared the way for the development of positive international law based on the will of states.

Though separated from the concept of positive law, natural law did not just disappear; it continues to march under the banner of morality. Separated from its religious connotations natural law can be seen as common morality.²⁴⁰ It is not the result of either positive law or custom, but provides a standard by which everyone ought to live as a result of being human. Values such as those defined in the United Nations Declaration of Human Rights can be seen as the development of natural law in a secular age. It reinforces the key concept of natural law proponents that the global community has a responsibility to protect the right of all peoples to realise their essential being, and therefore, fulfil themselves as much as possible as human beings.²⁴¹

This commitment to human rights can also be observed in the Just War tradition which stretches from Augustine in the 5th century, through Thomas Aquinas in the 13th century to the present. Although originally developed by Christian thinkers the doctrine today it is not reliant on scriptural references or ecclesiastical authority or the like. It is the product of ethical reflection and dialogue over many centuries about the problems of war and is available to

²⁴⁰ Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs* 16, no. 1 (2002), 64.

²⁴¹ Hensel, "Theocentric Natural Law and the Norms of the Global Community," 43.

those of other faiths or to humanists.²⁴² Although relating to the concerns of the morality of war it also provides a useful starting point for examining the morality of humanitarian intervention particularly when coercive force is involved. The doctrine establishes a range of principles that must be satisfied if war, or in this case humanitarian intervention, is to be ethically justified. They fall into two groups. The first concerns when it is, or is not, legitimate to resort to war (*jus ad bellum*), and the second establishes what it is right to do when conducting war (*jus in bello*).²⁴³

There are six criteria under *jus ad bellum*. First, there must be a *just cause*, that is, there must be a good reason for going to war - to protect the innocent, for example, to prevent genocide or to restore rights wrongfully denied, or to re-establish order. The second requirement is that there must be *proportionate cause*. Besides being just, the cause must be serious enough to warrant engaging in war. There must be a reasonable expectation that the outcome will bring about enough good to offset the inevitable pain and destruction of war. *Right intention* is the third condition, that is, the aim must be to create a better, more just, subsequent peace than there would have been if war had not taken place. Fourthly, the intervention requires the *right authority*. Historically the right authority has usually meant the ruler or government of a sovereign state. However, in modern times it is usually considered that a higher authority than a single state, such as the United Nations, is required. However, in practice regional bodies or coalitions of hegemonic states often take action without UN approval. Fifth, there must be a *prospect of success*, that is to say, there must be a reasonable chance that the action will succeed. The final obligation is that the action must be the *last resort*. Action should

²⁴² Michael Quinlan, "Justifying War," *Australian Journal of International Affairs* 58, no. 1 (2004), 8.

²⁴³ Owen Harries, "Morality and Foreign Policy," *CIS Occasional Paper* 94, 29 October 2004., 19.

not be taken unless all other avenues have been tried or ruled out as ineffective.²⁴⁴

There are two criteria under *jus in bello*. First, *discrimination* which stipulates that, in the conduct of the war, there must be no deliberate attack on the innocent. Deliberate attack means attack in which harm to the innocent is the direct aim of the attack, or essential to achieving its goal. This does not rule out an attack in which harm may befall the innocent, as long as all that could have been done to reasonably protect the innocent is done, consistent with the legitimate military purpose of the action. The second prerequisite is *proportionality*, that is, action must not be taken in which the harm done is an unreasonably heavy price to pay for the likely military victory. The harm needs to be weighed in relation to the lives and well-being, not only of innocent people, but also of the military personnel involved in the attack.²⁴⁵

The connections between the Just War doctrine and humanitarian intervention are apparent. The Report of the International Commission on Intervention and State Sovereignty (ICISS) developed a set of moral criteria for intervention which draws heavily on the Just War criteria.²⁴⁶ The six criteria are detailed below (four relate to *jus ad bellum*; two to *jus in bello*).

The first necessity outlined under *Jus ad bellum* is the *scale of the crisis* (just cause and proportionate cause in the Just War criteria outlined above)²⁴⁷. Generally, there is agreement about two circumstances in which humanitarian intervention might be justified, that is, when the government

²⁴⁴ Quinlan, "Justifying War." 8-10.

²⁴⁵ Ibid.

²⁴⁶ "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty." And "The Responsibility to Protect: Research, Bibliography, Background, Supplementary Volume to Report of the International Commission on Intervention and State Sovereignty," (Ottawa: International Development Research Centre for ICISS, 2001).

²⁴⁷ The corresponding criteria of the traditional Just War criteria.

of a state is the perpetrator of mass atrocities and when a government is fundamentally unable to maintain law and order and prevent a plunge into anarchy. However, there is less agreement as to the thresholds in terms of the breaches of human rights that apply before intervention is justified. Additionally, there is near universal agreement that the threshold for military intervention must be very high. Generally, it is agreed that genocide and crimes against humanity warrant intervention, but others would argue that lesser occurrences that entail the actual, or imminent large scale loss of life would also justify intervention.²⁴⁸

The second prerequisite outlined by the ICISS criteria is the *purposes of intervention* (right intention). This element of the criterion relates to the motivations underlying humanitarian intervention. Many argue that the primary purpose should be to protect victimised populations, that is, the intervention should be apolitical or disinterested which would prevent the seizure of territory or the installation of a puppet regime under the guise of protecting innocent civilians. Others take a less rigorous view of motivations. Tesón argues that "...the true test is whether the intervention has put an end to human rights deprivations. That is sufficient to meet the requirements of disinterestedness, even if there are other non-humanitarian reasons behind the intervention."²⁴⁹ Wheeler proposes a sliding scale of international legitimacy, that praises interventions that have humanitarian motives, while excusing those that lack such credentials, but which achieve a positive outcome.²⁵⁰ In light of the increased use of temporary international administrations a more non-specific interpretation of the purposes of the intervention may be appropriate. That is, the meaning of apolitical would be that the intervenors do not gain any advantage through the intervention, and

²⁴⁸ "The Responsibility to Protect: Research, Bibliography, Background," (International Commission on Intervention and State Sovereignty, 2001).

²⁴⁹ Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 98.

²⁵⁰ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 51.

that the overriding agenda is the safety and security of the affected local populations.²⁵¹

Third, any intervention should be a *multilateral action* (right authority). Many argue that interventions should be multilateral and UN-authorized in order to limit abuse. Others have gone further by arguing that interventions should not be undertaken by hegemonic powers. However, from an ethical standpoint it is not legitimate to argue that an intervention by a single state or hegemonic power is necessarily wrong. If a multinational intervention is ethically sound it is hard to argue that it would not remain so if conducted by a single state. Similarly, hesitation against interventions by hegemonic states may be understandable but that alone cannot destroy the confidence in an otherwise justifiable intervention. In fact, hegemonic powers are among the few states with the ability to project military force beyond their borders.²⁵²

The final requirement is that any intervention is the *last resort*. Recourse to the use of force should be permissible only when all other measures have been exhausted. Other measures could include intervention by way of fact-finding missions, mediation, statements of concern by intergovernmental organisations, condemnation, criminal prosecution of perpetrators, and measures limiting political, economic, and military relations, including embargoes and offers of peacekeeping. That is not to say that these actions need to be taken in sequence but that all the options must have been considered seriously prior to armed intervention.²⁵³

Jus in bello consists of two conditions. First, *proportionate means*, meaning the level of force used in humanitarian intervention is relevant to ethical decision

²⁵¹ "The Responsibility to Protect: Research, Bibliography, Background,

²⁵² Ibid.

²⁵³ "The Responsibility to Protect: Research, Bibliography, Background."

making; that the force must be appropriate, not excessive. The aim of stopping human rights violations might justify armed intervention but the minimum level of force should be used to achieve a humanitarian objective.²⁵⁴ The second requirement relates to the *impact of the intervention* (discrimination and prospect of success). It is extremely difficult to predict whether an armed intervention will do more harm than good. An intervening force has a duty to abide by the rule of International Human Rights Law and do the least possible harm to those being protected, to civilians who are not participating in the fighting, to the perpetrators, and to the intervening party itself. Determining the costs and benefits of interventions are difficult to assess prior to the actual use of coercion. This reality makes proportionality and impact the most subjective of criteria, particularly when the uncertainties of waging war and the subjective judgements of what constitutes acceptable and unacceptable damage are taken into account.²⁵⁵ In addition, this principle would imply that there must be a reasonable prospect of success, as it would be difficult to imagine that military action against a major power would achieve its humanitarian objectives.

In 2004, the UN Secretary General, Kofi Annan, appointed to the High-Level Panel on Threats, Challenges, and Change to report on many aspects of UN operations. Their report, *In Larger Freedom*²⁵⁶, was intended to set both the tone and the substantive agenda for the Sixtieth General Assembly which included a Summit of Heads of State meeting on 14-16 September, 2005. The High Level Panel incorporated the core of the report of the ICISS in its recommendations on internal security. In particular, it confirmed that the Security Council had a unique capacity to authorise force but that it should

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ "In Larger Freedom: Towards Development, Security and Human Rights for All," (New York: Report of the Secretary-General of the United Nations for Decision by the Heads of State and Government in September, 2005).

follow guidelines which, while worded differently, are in line with those proposed by the ICISS:²⁵⁷

Seriousness of Threat. Is the threatened harm to the State or human security of a kind, and sufficiently clear and serious to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

Proper Purpose. Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

Last Resort. Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

Proportional Means. Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

Balance of Consequences. Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction.²⁵⁸

The Just War tradition, therefore, can provide a way of confronting the difficult question of whether intervention to avert humanitarian tragedies in fragile and failed states constitutes a just or moral reason for intervention. And if it does, it also provides a blueprint for intervention, that is, who needs to carry out the intervention; whether other non-violent or less destructive

²⁵⁷ Simon Chesterman, "Reforming the United Nations: Kofi Annan's Legacy Gets a Reality Check," (Canberra: Australian Strategic Policy Institute, 2006), 12.

²⁵⁸ *Ibid.*, 13.

alternatives have been sufficiently explored and exhausted; whether the ends justify the means; whether enforcing limitations on the participants that will ensure that the intervention promotes the cause of humanitarian justice. While the Just War tradition is the result of ethical reflection over many centuries there are other traditions that provide a moral justification for humanitarian intervention. As noted in the introduction, this thesis is based on the conception of a forceful liberalism that posits that humanitarian intervention is morally justified in appropriate cases. A major purpose of states and governments in liberal political philosophy is to protect and secure human rights, that is, the rights that all persons have by virtue of their humanity alone. Governments that seriously violate those rights undermine the reason that justifies their political power, and, therefore, should not be protected by international law.²⁵⁹

The goal of a liberal political society is individual autonomy in a community of tolerance.²⁶⁰ The moral standing of the state relies on its capacity to respect and protect the rights of its citizens, and on their consent to its rules and institutions. The liberal state is based on a constitution that defines the powers of governments in a manner that is consistent with respect for individual autonomy. This Kantian conception of the state is the liberal solution to the predicaments of anarchy and tyranny which are the two extremes in the political continuum of political coercion. Anarchy is the complete absence of social order which inevitably leads to the Hobbesian war of all against all. Tyranny, at the other extreme, is both an assault on the dignity of a state's citizens and a betrayal of the very purpose for which government exists.²⁶¹ To maintain the Kantian centre on the continuum, away

²⁵⁹ Fernando R. Tesón, "The Liberal Case for Humanitarian Intervention," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe, and Robert Keohane (New York: Cambridge University Press, 2003), 96.

²⁶⁰ Michael J. Smith, "Humanitarian Intervention: An Overview of the Ethical Issues," *Ethics and International Affairs* 12 (1998), 75.

²⁶¹ Tesón, "The Liberal Case for Humanitarian Intervention." 101.

from extreme lack of order (anarchy) on the one hand, and governmental suppression of individual freedom (tyranny) on the other, one option is humanitarian intervention. Both anarchical and tyrannical conditions, either because of a total collapse of social order or the misuse of social coercion, deprive individuals from conducting meaningful life in common plans, pursuing individual life plans or pursuing their autonomous projects. These serious violations of fundamental civil and political rights generate obligations on others who have a *prima facie* duty to help them.²⁶²

Some critics of humanitarian intervention rely on the Westphalian significance of state sovereignty and national borders but, in this conception of liberalism, the justification of state sovereignty cannot rest on its own presumptive legitimacy.²⁶³ Instead, a state's sovereignty must be derived from individuals whose rights are to be protected from anarchy, tyranny and foreign oppression and also derived from the citizens right to a safe sovereign framework in which they can insist on their autonomy and pursue their interests. As a result, a state forfeits its moral claim to full sovereignty when it is oppressive and violates the autonomy and integrity of its citizens.²⁶⁴

Others object to the very idea of using liberal political theory to address the question of humanitarian intervention. Their argument is based on the relativist objection, that is, that the world is ideologically and culturally too diverse for any one political philosophy to apply to a problem that concerns all persons on the globe.²⁶⁵ In this line of reasoning one would have to utilise different ethnic traditions in order to analyse international problems. It is

²⁶² Ibid.

²⁶³ Smith, "Humanitarian Intervention: An Overview of the Ethical Issues." 76.

²⁶⁴ Ibid.

²⁶⁵ Tesón, "The Liberal Case for Humanitarian Intervention." 100.

argued that liberal analysis is acceptable for someone who accepts liberal principles, but not satisfactory for those who do not.

There are two rebuttals to this point of view. First, the concept of relativism as a general philosophical principle is difficult to sustain. For example, if the philosophical proposition that all persons have rights is sound, then it is universally sound and it does not matter that the origin of that proposition is liberal or something else. The liberal can acknowledge that the views he defends are western, while still maintaining that they are better views and, although the liberal views may be right or wrong, they can not be right for some and not for others. If the liberal views are incorrect, then that has to be shown by rational argument, not by merely asserting that some people do not believe in them.²⁶⁶

Secondly, the relativist objection does not go to the argument that all religious and ethical theories converge in their judgement that certain circumstances (for example, mass murder, torture, crimes against humanity, etc.) are morally abhorrent. When confronting governments that are responsible for these atrocities, no reasonable ethical or political theory could condone them and prevent intervention. And if there were theories that did close the eyes to these human rights violations their case would cease to be reasonable or plausible.²⁶⁷

However, non-intervention based on relativism is objectionable as, if implemented, it results in grievous harm to persons which is not defensible from a liberal stand-point. While intervening to assist others will always be

²⁶⁶ Ibid., 101.

²⁶⁷ Ibid.

onerous it is the moral duty of liberal societies to do so, as a failure is a breach of common humanity²⁶⁸

Conclusion

This chapter explored the justifications for humanitarian intervention, which is a controversial concept in international relations, and argued that there are legal and moral grounds that can validate such actions. There are two principal sources of international law relating to humanitarian intervention: treaties and conventions, and customary international law.

The UN Charter is the principal convention governing the legality of the use of force under international law. Chapter I, Article 2(4) requires that all members “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”²⁶⁹ The key to the use of force is Chapter VII which allows the application of enforcement measures and in particular Article 39 which can authorise action if the Security Council determines “the existence of any threat to peace.”²⁷⁰ What is clear is that there is no allowance for humanitarian intervention without the authorisation of the UN. Under customary law it is sometimes argued that a new international customary norm of humanitarian intervention has been created as an exception to the use of force under the UN Charter. However, the number of non-authorised cases of humanitarian intervention are too small to claim that it is a fully accepted principle under customary law.

Three moral justifications for humanitarian interventions were considered. First, Natural Law which, separated from its religious connotations, can be seen as common morality. Values such as those defined in the United

²⁶⁸ Ibid.

²⁶⁹ *Charter of the United Nations (Entered into Force 24 October 1945)*

²⁷⁰ Ibid.

Nations Declaration of Human Rights can be seen as the development of Natural Law in the secular age and its proponents claim that the international community has a responsibility to protect the rights of all peoples. Next was the Just War tradition which also developed out of religious principles. The tradition establishes a range of principles that must be satisfied if intervention is to be ethically justified. This chapter highlighted four such principles: right cause, last resort, proportionate means and reasonable prospects. Finally, this chapter considered the liberal political philosophy as a justification for humanitarian intervention. It argued that a major purpose of states and governments in liberal philosophy is to protect and secure human rights, that is, the rights of all persons have by virtue of their humanity alone. To a large extent these liberal political philosophies represent a secular development of the principles outlined in the Just War tradition and support the four principles of justification detailed above. Taken as a whole, the legal and moral justifications discussed in this chapter are reflected in the adoption by the international community of the developing norm of "The Responsibility to Protect."²⁷¹

²⁷¹ UN Draft Outcome Document, September 13, 2005, 27

The International Community and Responsibility

A theme developed in the preceding chapters was the concept of responsible sovereignty. Firstly, it was contended that states have a responsibility to provide a range of political goods and services to their citizens, specifically, security, health and education, economic opportunity, good governance, law and order, and fundamental infrastructure requirements. It was argued that these responsibilities should be seen within the broader context of global human rights norms established within the UN Charter and the Universal Declaration of Human Rights and the subsequent Covenants on Economic, Social and Cultural Rights and Civil and Political Rights.

Secondly, in a conception of responsible sovereignty, it was argued that in human rights law, in UN practice, and in state practice itself, it is now commonly accepted that sovereignty implies a dual responsibility: internally, to respect the basic rights of all citizens within the state, and externally, to respect the sovereignty of other states. However, when states fail to meet these responsibilities it was argued that their sovereignty is compromised to some extent and that there is the possibility of intervention by the international community as a consequence.

Finally, various legal and moral justifications were analysed to determine whether intervention could be justified when states failed to meet these responsibilities. As noted in Chapter 4, while the matter is still subject to debate, a serious internal failure to meet the responsibilities of sovereignty can give rise to external intervention.

These issues were investigated by the International Commission on Intervention and State Sovereignty (ICISS), which was established following

the failure of the international community to respond effectively to the humanitarian tragedies in Somalia, Rwanda and Srebrenica. The outcome of the commission was the proposition that the international community does indeed have a “responsibility to protect”. In short, this finding holds that the international community has more than a justification to act, it has a actual responsibility to take action to prevent humanitarian tragedies. Fundamental to any intervention is the question of timeliness. Never again must intervention be so slow that it permits a genocide to occur, as it did in Rwanda, but at the same time humanitarian intervention is about overriding traditional approaches to intervention, not pre-emption based on unsubstantiated allegations. Taking into account these elements of the developing international norms, it will be argued that an intervention may be legitimate, even when it is unlawful.

The Responsibility to Protect

The International Commission on Intervention and State Sovereignty (ICISS) was launched at the UN Millennium Assembly in September 2000 funded by the Government of Canada with the support of several major US foundations, with the assistance of the British and Swiss Governments and with the cooperation of many others. The ICISS was designed to meet three ambitious goals: first, to promote a comprehensive debate on the issue of humanitarian intervention; second, to foster a new global political consensus on how to move forward; and finally, to find new ways of reconciling the principles of intervention and state sovereignty.²⁷²

The ICISS Commission published its final report on December 2001 and its most significant contribution to the debate was to reconceptualise the core

²⁷² Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society." Available from ProQuest; Address: <http://proquest.umi.com> (Accessed 24 May, 2005).

idea of “the right to intervene” as rather “the responsibility to protect”.²⁷³ By changing the focus from those exercising power to the victims of the conflict, it highlighted the need for assistance by the international community if the victims are to be protected from suffering. The ICISS Commission argued that the primary responsibility for that protection lies with the sovereign state but “if that state is unable or unwilling to protect its population, or if it itself is the cause of the threat, the responsibility to protect these people shifts to the international community of states.”²⁷⁴ The report breaks down the responsibility to protect into three specific responsibilities. The first is the responsibility to prevent humanitarian emergencies, by addressing the cause of conflicts and man-made crises before the situation becomes critical. The second is the responsibility to react by responding to serious situations including the use of sanctions, international prosecution and in extreme cases, military intervention. The final responsibility is to rebuild, by providing full assistance with the recovery, reconstruction and reconciliation of a state.

The idea of politically motivated military interventions under the guise of “the responsibility to protect” is one that concerns many states. Therefore, to avoid the abuse of this principle, the following guidelines were put forward by the ICISS as to when it is appropriate to use force. First, the threat of a state permitting or committing atrocities must be serious and credible. Second, the primary purpose of the intervention must be to halt or avert human suffering. Third, military intervention should be used as a last resort and when other peaceful means have failed. Fourth, the scale of the military intervention should be the minimum required to stop the atrocities and, finally, there must be a reasonable chance of success in halting or averting the suffering. Ultimately, as the primary duty of the UN Security Council is

²⁷³ “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.”

²⁷⁴ Evans, *Banishing the Rwanda Nightmare: The Responsibility to Protect*.

to maintain peace and security it is the most appropriate body to authorise the use of force for the purpose of human protection. However, if the Security Council fails to act, other states or regional organisations may seek alternative means of responding to such humanitarian emergencies, as was done in Kosovo, and this raises serious questions regarding the legality of such actions.

A key issue in any humanitarian intervention is the question of when to intervene. Rwanda demonstrated any delay can be devastating when over 800,000 people were killed in three months. On the other hand the international community needs to avoid the accusation that humanitarian intervention is just a return to colonial habits on the part of major western powers. By incorporating the responsibility to prevent within the framework of “the responsibility to protect” the ICISS provided a justification for the international community to intervene prior to the development of a full-scale humanitarian emergency. Chapter 2 set out a framework to assist the international community assess when intervention may be required. However, ultimately the decision will rely on the subjective judgement and political will of the international community.

But a question remains, how much international support is there for the concept of “the responsibility to protect”? Certainly three major reports on the United Nations have endorsed the idea: the UN’s *High Level Panel Report on Threats, Challenges and Change*, Secretary-General Kofi Annan’s report *In Larger Freedom*, and the Gingrich/ Mitchell taskforce report *American Interests and UN Reform*. Indeed the Gingrich/ Mitchell report notes that “sovereignty belongs to the people of a country, and governments have a responsibility to protect their people. If a government fails in its primary responsibility to protect the lives of those living within its jurisdiction from genocide, mass killings, and massive and sustained human rights violations, it forfeits its

claim to immunity from intervention....if such intervention is designed to protect the at-risk population."²⁷⁵ It is highly significant that this conclusion is advanced by the conservative end of the American political spectrum not noted for its internationalism.

Additionally, in September, 2005 the UN hosted a world summit of leaders who signed a document that stated that "each individual state has the responsibility to protect its populations from genocide, war-crimes, ethnic cleansing and crimes against humanity". Further the states agreed "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN Charter.....on a case by case basis and in cooperation with relevant organisations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations..."²⁷⁶ Furthermore, in Resolution 1674, adopted by the Security Council on the 28 April 2006 the policy adopted at the summit was reaffirmed:

Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity....The international community, through the United Nations, also has the responsibility....In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in co-operation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect populations from

²⁷⁵ Newt Gingrich and George Mitchell, "American Interests and UN Reform: Report of the Taskforce on Reform of the United Nations," (Washington, D.C.: United States Institute of Peace, 2005).

²⁷⁶ UN Draft Outcome Document, September 13, 2005. Available from http://www.un.org/summit2005/Draft_Outcome130905.pdf (Accessed 15 November, 2005), 27.

genocide, war crimes, ethnic cleansing and crimes against humanity.²⁷⁷

If the “responsibility to protect” is to be accepted as a norm, there needs to be a revolution in consciousness as it represents a convergence of law and morality. Acceptance of human rights in the international system implies the recognition of a right to intervention but, as Nico Krisch observes, international law often prevents this by relying on order and state sovereignty.²⁷⁸ If “the responsibility to protect” is to rely on normative values or *jus cogens*, rather than be codified formally in international law, then it must receive wide acceptance in the international community for it to meet its aim of preventing humanitarian emergencies.

A Global Standard of Civilisation

According to Mohammed Ayoob, adopting “the responsibility to protect” as a norm of international society also means adding “respect for a minimal standard of human rights” as an essential attribute of sovereignty. That is, the state has to act towards its citizens in ways that not only meet with their approval but also the approval of other states and certain crucial international organisations.²⁷⁹ This view is not without its critics. Some commentators believe that this “sovereignty as responsibility” thesis is, in fact, the resurrection of the “standard of civilisation” argument in another guise, and that it will herald a return to colonial habits and practices on the part of major Western powers. The world could be divided once again into

²⁷⁷ See UN Security Council S/RES 1674(2006) available from: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/331/99/PDF/N0633199.pdf?OpenElement> and Gareth Evans, “The Responsibility to Protect: Unfinished Business” (paper presented at the G8 Summit: Issues and Instruments, Moscow, 2006).

²⁷⁸ Nico Krisch, “Legality, Morality, and the Dilemma of Humanitarian Intervention after Kosovo,” *European Journal of International Law* 13, no. 1 (2002). Available from ProQuest; Address: <http://proquest.umi.com> (Accessed 30 April 2004).

²⁷⁹ Mohammed Ayoob, “Humanitarian Intervention and State Sovereignty,” *The International Journal of Human Rights* 6, no. 1 (2002), 84.

zones of civilised and uncivilised states which would legitimate interventions by the former against the later.²⁸⁰

The classical “standard of civilization” thesis, which reflected the established thinking in Europe until the end of the nineteenth century, can be described as Burkean, in that it argued that only those countries that had reached a certain standard of civilised behaviour had the right to attain sovereign status and interact with each other on the basis of a mutual recognition of sovereignty.²⁸¹ However, this standard of civilisation was overtaken by the recognition of a right to self-determination and sovereign equality which was derived more from Hobbes’s uncivilised state of nature.²⁸²

Donnelly argues that self-determination required accepting the lowest common denominator of sovereign equality, rather than seeking to raise all states to a higher standard.²⁸³ In effect, civilisation lost all substantive meaning as many murderous dictators were accepted as “civilised, though with other civilisations than ours.”²⁸⁴ So, although this system was preferable to unchecked power politics, it had few positive moral attractions. During the Cold War this legal positivist theory of recognition enjoyed strong support particularly from the communist and Third World states.²⁸⁵ However, the decades following the Second World War also saw the development of an extensive body of international human rights law.

International human rights are Lockean in nature and appeal to a liberal understanding of civilisation, which sees the state as an instrument to realise the rights of its citizens and, as a result, a government is entitled to full

²⁸⁰ Ibid.

²⁸¹ Jack Donnelly, “Human Rights: A New Standard of Civilization,” *International Affairs* 74, no. 1 (1998). 14

²⁸² Ibid.

²⁸³ Ibid., 12.

²⁸⁴ John Westlake quoted in Ibid., 13.

²⁸⁵ Ibid., 14.

membership in the international community to the extent that it implements internationally recognised human rights. To the extent that there is a set of accepted human rights, these rights are expressed in authoritative documents such as the *Universal Declaration of Human Rights* and the international human rights covenants. Most are not enforceable (except to a limited extent for genocide and extreme crimes against humanity) but, all the same, they represent the important concept that international legitimacy and membership of the international community rest, in part, on humane and civilised behaviour.²⁸⁶ Additionally, it is becoming acknowledged that the way any state treats its citizens is a legitimate concern of other states in the international community. Thus Mehdi Mozaffari claims that the developing body of international law, norms, values and customs are providing the basis for the rise of a global standard of civilisation.²⁸⁷

Legitimacy

In the previous chapter, justification for humanitarian intervention was examined from both moral and legal perspectives. Neither is clear cut. Thus the legitimacy of any action is not necessarily obtained by asserting the existing law as if its authority were unquestionable, nor by asserting moral principles. Instead, it is argued that careful attention needs to be given to the claims of each specific condition when determining what actions may be appropriate to particular situations. Moreover, the definition of “legitimacy” itself is open to question. There is no international definition of “legitimacy” which is a complex and multifaceted concept.²⁸⁸ As such, it is difficult to make a distinction between it and several closely related concepts, such as legality and justice.

²⁸⁶ Ibid., 14.

²⁸⁷ Mehdi Mozaffari, "The Transformationalist Perspective and the Rise of a Global Standard of Civilization," *International Relations of the Asia-Pacific* 1 (2001), 251.

²⁸⁸ Olav Schram and Davor Vidas, "Effectiveness and Legitimacy of International Regimes," in *Governing the Antarctic: The Effectiveness and Legitimacy of the Antarctic Treaty System*, ed. Olav Schram and Davor Vidas (Cambridge: Cambridge University Press, 1996), 20-21.

Legality concerns the legal validity of a rule. The way the behaviour of states is brought into conformity with the rules and the legality of intervention has been discussed previously in Chapter 4. Legitimacy is related to substantive principles of justice, but it is not the same thing as justice. That is, states believe that an action is legitimate because they believe it is just, but the legitimacy is relative to the states conferring legitimacy. Legitimacy is important because, not only do states want to feel that they are doing the right thing, but also because it is of practical advantage. Other states will accept an action if they believe that the action is justifiable; if not, they will resist, complain, obstruct or actively oppose. There is a dilemma between legality and legitimacy. As Richard Falk asserts, a humanitarian intervention may be extremely difficult, if not impossible, to justify legally because it does not comply with international law and the UN Charter, but legitimate as it relieves a humanitarian emergency.²⁸⁹

Increasingly, there is a position that holds that, although unauthorised intervention would be presumptively illegitimate, this presumption can be overridden.²⁹⁰ Legitimacy can be judged only by the way it relates to the norms of the international community at a particular point in time. Most of the norms of the international community have evolved since the inception of the modern international system in the mid seventeenth century and include, respect for state sovereignty, the non-interference in the affairs of another state and the maintenance of order within the international community.²⁹¹ These earliest norms on non-intervention were clearly opposed to any humanitarian intervention in a state regardless of the reason.

²⁸⁹ Richard Falk, "Legality to Legitimacy," *Harvard International Review* 26, no. 1 (2004). Available from ProQuest; Address: <http://proquest.umi.com> (Accessed 26 June, 2005).

²⁹⁰ Smith, "Humanitarian Intervention: An Overview of the Ethical Issues." 77.

²⁹¹ Hensel, "Theocentric Natural Law and the Norms of the Global Community." 41.

However, following the Second World War, there has been a rapid development of human rights norms which have been codified in various declarations, treaties and covenants designed to specifically preclude abuses of human rights. In the twenty-first century the international community accepts that these basic humanitarian norms must be adhered to by the various states in the international system.²⁹² More problematic is the legitimacy of external intervention to secure these humanitarian norms. Enforcing humanitarian norms legitimately through legal avenues is not without its obstacles, but it is far simpler than seeking legitimacy without a clear lawful base.

For humanitarian intervention to be legitimate, in the absence of appropriate legal authority, it is crucial to adopt a conception of legitimacy that recognises the human rights norms developed over the last fifty years. Nicholas Wheeler's solidarist theory of Legitimate Humanitarian Intervention, which is a variation of the Just War tradition, offers one way forward.²⁹³ This theory relies on four criteria: just cause (best regarded as a supreme humanitarian emergency), last resort, a proportional use of force, and a high probability of obtaining a positive humanitarian outcome.

This theory varies from both the traditional and the ICISS versions of the Just War tradition, in that it maintains that the criteria omitted from those versions, that is, right intention and right authority, only confuse the issue of the justification of humanitarian intervention. First, in view of the diversity of interests and values in international relations it is difficult to arrive at a case of pure intention. Indeed it is possible to argue that even if an intervention was motivated by non-humanitarian intentions, it could still be regarded as humanitarian if the motives and methods utilised did not

²⁹² Ibid.

²⁹³ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 34.

undermine a positive humanitarian outcome.²⁹⁴ Tesón argues that “the true test is whether the intervention has put an end to human rights deprivations that is sufficient to meet the requirement of disinterestedness, even if there are other, non-humanitarian reasons behind the intervention”.²⁹⁵

The question of “proper authority” is more problematic. Indeed, generally, international lawyers and legal scholars argue that humanitarian intervention is unlawful based on Article 2 (4) of the UN Charter that prohibits the use of force against the territorial integrity and political independence of states. Although they do accept that the UN Security Council has the legal authority under the Chapter VII provisions to authorise military action.²⁹⁶ However, as the Kosovo intervention demonstrates, the moral case for action does not necessarily rely on authorisation from an international organisation.²⁹⁷ Therefore, in cases of extreme and rapidly progressing humanitarian crises, there is a moral argument that intervention in these circumstances is one of those times that ethical concerns take precedence over the legality of pursuing the “right authority”.

Under solidarist theory of legitimacy, humanitarian intervention may still be regarded as legitimate, even if technically unlawful, if it meets the four criteria noted above. As such it challenges the existing framework that all humanitarian interventions should meet the Just War tradition, even contemporary iterations such as those set out by the ICISS and the United Nations.²⁹⁸ The aim of this solidarist approach is to make humanitarian intervention more practical by bringing legitimacy within reach. As Wheeler

²⁹⁴ Ibid., 38. This issue is examined in more detail in the next chapter.

²⁹⁵ Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*., 106-7.

²⁹⁶ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*., 41.

²⁹⁷ Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society.", Available from ProQuest; Address: <http://proquest.umi.com/> (Accessed 30 November, 2004).

²⁹⁸ See "In Larger Freedom: Towards Development, Security and Human Rights for All." and "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty."

pointed out, the Just War position even as modified, set the criterion for legitimacy so high that they that are rarely, if ever met.²⁹⁹ This has severely restricted those responding to the emerging norm of “the responsibility to protect”

Conclusion

There are two ways that “the responsibility to protect” can be accepted by the international community: either by being formally incorporated into international law, or through its acceptance as a new norm of state practice in international relations. Despite being endorsed by a UN-sponsored summit of world leaders, there have been no moves, to date, to codify it in international law. Nevertheless, the episodes of genocides and ethnic cleansing in the 1990s have forced the international community to confront the issues of humanitarian intervention in a more serious way. The world summit was a step on the way to recognising the emergence of a norm based around “the responsibility to protect”. This chapter argued that this emerging norm provides a basis for the international community to act to prevent humanitarian emergencies. Further, it was contended that interventions may be considered legitimate, even if technically they are unlawful, provided that they meet the criterion of the solidarist theory of Legitimate Humanitarian Intervention.

Incorporated with the concept of “the responsibility to protect” are three specific responsibilities: the responsibility to prevent, to react and to rebuild. These may be also reflected in the modern humanitarian conception of a global standard of civilisation, which holds that the international community requires a respect for a minimum standard of human rights as expressed in

²⁹⁹ Wheeler notes that no humanitarian interventions since 1945 have met all eight criteria of the Just War tradition, see Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 52.

authoritative documents such as the *Universal Declaration of Human Rights* and other human rights covenants. Based on a liberal understanding of civilisation it presupposes that a government is entitled to full membership of the international community to the extent that it implements internationally recognised human rights. This frees up the moral restraints on the traditional doctrine of non-intervention, thus making the action in defence of “the responsibility to protect” more practical.

Wheeler’s defence of Legitimate Humanitarian Intervention based on a solidarist philosophical position has presented a way of cutting through this Gordian Knot. It builds on the Just War tradition but adapts it to modern circumstances in a way that makes this tradition usable. Wheeler’s argument is located in what he sees as significant changes in state behaviour favouring the direction he has identified. The World Summit appears to have authenticated significant elements of this approach. The following chapters will explore the extent to which there has been a long term secular trend in state practice to sustain this solidarist position.

Humanitarian Intervention, 1945-91

The Cold War witnessed heightened sensitivities to securing and preserving what was often newly won, and hard fought for, sovereignty. External intervention, therefore, smacked of neo-colonialism, imperial arrogance, and the like. Thus, during the Cold War, one of the problems of addressing the issue of humanitarian intervention was that of terminology. It was critical to differentiate between intervention on behalf of a state's own citizens and interventions meant to help the citizens of another state for purely humanitarian reasons. The term could be least controversially applied to situations where a state used force to rescue its own nationals facing extreme physical danger on the territory of another state who was unwilling or unable to protect them.³⁰⁰ Among examples of these interventions, focused on rescuing a state's own citizens, is Israel's raid on Entebbe Airport in Uganda in 1976, which was considered lawful by the United States and European states but was condemned by the communist states and the Organisation for African Unity.³⁰¹

Two international rescue operations were carried out in the Congo during the Cold War. The first, in 1964, was conducted by Belgium troops, transported in American aircraft and was successful in rescuing 2,000, mostly European hostages. The operation provoked considerable criticism from the African states and the Soviet Union who saw it simply as an excuse for interfering in the Congo's domestic strife. A subsequent debate in the Security Council led to a resolution calling for an end to such interventions in the Congo.³⁰² The second intervention, in 1968 was carried out by French and

³⁰⁰ Weisburd, *Humanitarian Intervention 1945-89*.

³⁰¹ Ibid.

³⁰² Ibid.

Belgium forces, again with American support, after rebel forces invaded the mineral-rich province of Shaba. Although the primary purpose was once again to rescue European hostages both France and Belgium had considerable economic interests at risk which they wished to protect. However, the intervention only lasted a week and after their departure the French and Belgium were replaced by Moroccan forces, who served a peace-keeping function in conjunction with troops provided by some other African states.

The legitimacy of interventions aimed at rescuing nationals was well recognised during this period, even to the extent that states sought to use it as a shield in situations where it was not applicable, for example in the US interventions into the Dominican Republic in 1965 and Grenada in 1983.³⁰³ However, it is also reasonable to claim that this merely reflected long-standing state practice which had long recognised the right of a state to protect its own nationals.³⁰⁴

More problematic, however, were the cases of intervention where the intended beneficiaries were the nationals of the state in which the intervention took place. In three cases during the Cold War, however, the intervening states certainly had strong humanitarian claims: India's intervention in East Pakistan in response to massacres by Pakistani troops; Vietnam's intervention in Cambodia to end the mass killings by the Khmer Rouge; and Tanzania's intervention in Uganda to dispose the brutal regime of Idi Amin.³⁰⁵ However, (except for India for a brief period immediately after the intervention) in none of these cases did the intervening states seek to justify their actions as humanitarian. Although it can be argued that in each case the intervenor's motives seem to have been based on self-interest

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force.*, 73.

rather than concern for a helpless population,³⁰⁶ this chapter develops the alternative argument that these interventions could be justified as humanitarian and that it was only Cold War politics that prevented them being seen as such.

In the first instance this chapter examines the facts of the three interventions and will then assess how these can be seen as humanitarian and their utility as precedents for the future. The primary benchmarks for this assessment are the criteria developed in Chapters 2 through 5 of this dissertation, especially the modification of the ICISS standards as advanced in Chapter 4 and 5. It will be shown that in respect to the responsibility of the international community to intervene to prevent humanitarian emergencies, that these early interventions did provide grounds for regarding them as precursors for later justification of humanitarian intervention.

India / Pakistan 1971 ³⁰⁷

After the partition of colonial India the new state of Pakistan was geographically split by more than 1,500 kilometres into West and East Pakistan and there were major cultural, linguistic, and economic disparities between the two parts. By 1971 the relationship between east and west was increasingly polarised as the Bengalis began to feel that they were being treated as a colony by the West Pakistani government. Although the Awami League from the east was the biggest single party in Pakistan it was only offered parity with the Pakistan People's Party representing the west of the country.

³⁰⁶ Weisburd, *Humanitarian Intervention 1945-89*.

³⁰⁷ The Background information was drawn in large part from Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force*., Thomas M Franck, "Interpretation and Change in the Law of Humanitarian Intervention," in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J L Holzgrefe and Robert O Keohane (Cambridge: Cambridge University Press, 2003)., and Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*.

SOUTH ASIA



Map 1. India/Pakistan/Bangladesh

Source: United Nations Cartographic Section

This dispute led to the postponement of the convening of the national assembly in 1971 and the Awami League responded by a campaign of nonviolent, non-cooperation in the east. The government feared that the Awami League was developing secessionist tendencies and was determined to stamp these out.

Talks designed to solve the problems between the two parties failed and on 25 March 1971 the West Pakistan leadership attacked the political leaders of the Awami League and its supporters. This action involved the widespread killing of civilians and included the horror of torture and extermination camps.³⁰⁸ The Bengalis began to organise a campaign of armed resistance, but the Pakistani army responded by killing unarmed civilians indiscriminately, raping women, burning homes, and looting or destroying property. It is estimated that at least 1 million people were killed and millions more fled across the border into India.³⁰⁹

The Indian government's immediate reaction was to express its concern at the developments in East Pakistan and subsequently adopted a resolution, in both houses of parliament, describing the repression as "amounting to genocide".³¹⁰ The Indian government then allowed the Awami League to establish a government in exile on its territory, although it did not recognise, immediately, the new government of Bangladesh when it proclaimed its independence on April 1971. However, the Indian government did secretly train and equip Bengali forces and assisted them in operating from bases on Indian territory.

The international community's reaction to the reports of mass killings in East Pakistan was to overwhelmingly affirm Pakistan's right to sovereignty and the norm of nonintervention. The dominant view was expressed by the Secretary General of the United Nations who accepted the Pakistan government's position that the conflict inside East Pakistan was within the domestic jurisdiction of Pakistan under Article 2 (7) of the U.N. Charter. This position was also adopted by the superpowers, the United States and the

³⁰⁸ L. Kuper, *The Prevention of Genocide* (New Haven: Yale University Press, 1985), 47.

³⁰⁹ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 57-58.

³¹⁰ *Ibid.*, 57.

Soviet Union, although both also called for an end to the bloodshed and repression.

The situation continued to deteriorate with the slaughter and mass rape eventually producing a situation where some nine to ten million people fled across the border and into India. These numbers of refugees created social and economic pressures on the border area and produced demands for the Indian army to intervene to salvage the situation. However, with the USA and China aligned with Pakistan, and the Soviet Union supporting India, there was no effective way for pressure to be brought to bear on Pakistan to cease its military action. In July the Secretary General of the United Nations, U Thant, reversed his earlier position that the U.N. was barred from intervening because of Article 2 (7) by arguing that Pakistan's internal repression constituted a threat to "international peace and security".³¹¹

Although this position received some support from France and Italy, the Security Council did not convene to discuss the crisis until war between India and Pakistan broke out on 3 December 1971. Who began the hostilities is open to some debate. Pakistan alleged that India had actually invaded as border skirmishes led to Indian forces advancing several kilometers inside Pakistani territory during November. At the same time, however, the Pakistani forces were shelling Indian towns on the border. The Indians had planned a full-scale attack for 4 December, but Pakistan launched an attack on eight Indian airfields on 3 December, and this precipitated an immediate Indian intervention. After twelve days the Pakistani army surrendered at Dacca, and the new state of Bangladesh was formally established.

India had an array of geopolitical reasons for intervening in East Pakistan, and humanitarian concerns were not necessarily the main, or even the most

³¹¹ Quoted in *Ibid.*, 59.

important reason for intervention. This is a case in which the intervention could have been justified in humanitarian terms and, in fact, the Indian representatives in both the General Assembly and the Security Council of the United Nations did articulate just such a justification.³¹² However, this argument was widely rejected by other states, including many that had no particular interests in the subcontinent. States as diverse as Argentina, Tunisia, China, Saudi Arabia and the United States responded to India's claims by arguing that the principles of sovereignty and noninterference should take precedence and that India had no right to meddle in the internal affairs of Pakistan.

As a result of this rejection of its humanitarian claims, India instead relied on self-defense to defend its actions. India argued that it had not violated the prohibition on the use of force in Article 2 (4) of the U.N. charter as Pakistan had struck first, and the implication was that its military response was consistent with the role of self-defense in Article 51 of the Charter.³¹³ However, India never raised Article 51 in its defense before the Security Council and this suggests that they realised they were on uncertain grounds in invoking this rule.³¹⁴ As a result the Indian ambassador to the United Nations put forward a claim of "refugee aggression" to justify its use of force. He argued that the meaning of aggression should also encompass the aggression that resulted from 10 million people coming to India as refugees by asking "if aggression against another foreign country means that it strains its social structure, that it ruins its finances, that it has to give up its territory for the sheltering of refugees... what is the difference between that

³¹² Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force.*, 76.

³¹³ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 60.

³¹⁴ In fact, in a later study by the International Commission of Jurists East Pakistan Staff Study it was concluded that, whilst Pakistan's attacks against Indian territory justified a military response under Article 51, the scale of India's response was not proportionate to the initial attack. See "East Pakistan Staff Study by the Secretariat of the International Commission of Jurists," *Review of the International Commission of Jurists* 8 (1972), 57

kind of aggression and the other type, the more classical type, when someone declares war, or something of that sort.”³¹⁵

Two factors need to be borne in mind when considering this intervention. Firstly, this was at the height of the Cold War and there were complex relationships between the superpowers and the two countries involved. The United States was an ally of Pakistan, and while it acknowledged the human suffering of the Bengali people it rejected India's justification for the use of force which it saw as a clear violation of the U.N. charter. This position was supported by China who insisted that the question of East Pakistan was solely the internal affair of Pakistan. The Soviet Union had signed a treaty of Peace, Friendship, and Cooperation with India in August 1971 and, as a result was the only state, along with its Warsaw Pact ally, Poland, who supported India's action in the Security Council. Secondly, this followed closely on the mass decolonisation movement of the 1950s and 60s. Most newly independent states believed so strongly in sovereignty and nonintervention that they supported the contention that this was solely the internal affair of Pakistan.³¹⁶ It is difficult to conjecture what the position would be today in similar circumstances, but the history of humanitarian intervention in the last fifteen years would indicate that such an intervention could be considered in a more favourable light today.

Vietnam / Cambodia 1979³¹⁷

In April 1975 the Khmer Rouge led by Pol Pot came to power in Cambodia. Urban workers were forcibly evacuated to the countryside to become group

³¹⁵ Quoted in Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*., 61.

³¹⁶ Ibid., 68-69.

³¹⁷ The Background information was drawn in large part from Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force*., Franck, "Interpretation and Change in the Law of Humanitarian Intervention.", Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*., and BBC News – Country Profiles available from http://news.bbc.co.uk/2/hi/country_profiles/default.stm (Accessed 7 February 2006).

cultural workers: money became worthless; basic freedoms were denied; and religion was banned. The Khmer Rouge used the phrase “Year Zero” to describe a new beginning and hundreds of thousands of the educated middle classes were tortured and executed in special centres. Others died from disease or exhaustion. Amnesty International estimated that between one to two million people died mostly through malnutrition and disease, although up to 300,000 deaths were the result of political killings.³¹⁸ As the reports of the “killing fields” began to become known during 1978 there was pressure from many states for the Cambodian government to be investigated by the United Nations Human Rights Committee, but before this could take place, Vietnam acted unilaterally to forcibly remove Pol Pot.

The Vietnamese and the Cambodian people had had a long history of antagonism and the conflict that developed between 1978 – 1979 can be seen as an extension of this hostility. Following the Khmer government coming into power, there were a number of border incidents with Vietnam. Pol Pot visited Hanoi to resolve these disputes and this led to the setting up of local cross-border committees that were to meet to settle any problems. This was followed in 1976 by a meeting to work out a treaty on disputed land and maritime borders.³¹⁹ However, the situation continued to deteriorate with the Khmer destroying Vietnam villages along the disputed border and massacring civilians. In October 1977 the Vietnamese launched an attack up to 25kms into Cambodia but then pulled back. This show of resolve did not deter further Khmer attacks and in December the Vietnamese launched an attack with 50,000 troops and then withdrew.³²⁰

³¹⁸ Franck, "Interpretation and Change in the Law of Humanitarian Intervention." 219.

³¹⁹ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 79.

³²⁰ *Ibid.*, 80.

GREATER MEKONG SUBREGION



Map 2. Vietnam and Cambodia

Source: United Nations Cartographic Section

When the Khmer Rouge rejected proposals from the Vietnamese for negotiations to solve the border problems, the Hanoi government changed its longstanding strategy and became convinced that the only solution was the removal of Pol Pot. Hanoi radio began to condemn Pol Pot's domestic atrocities and issued calls for the Cambodian people to overthrow him.

Vietnam wanted to avoid the risks of a direct military intervention by relying on an internal uprising and it felt that speaking out against the human suffering inside Cambodia would help turn the Cambodian people against its leaders. When this failed, Vietnam launched an invasion against Pol Pot's forces on Christmas Day 1978. On 3 January, Hanoi radio admitted that fighting was underway in Cambodia but attributed the action to the recently formed Cambodian Front for National Salvation (National Salvation Front). Pol Pot was overthrown on the 7 January and fled, and a new government declared itself as the People's Republic of Kampuchea, led by Heng Samrin, and was made up of members of the National Salvation Front.

A meeting of the U.N. Security Council was called on 11 January 1979 at which the Vietnamese claimed that Pol Pot had been overthrown by the National Salvation Front. Although Vietnam admitted that its forces had engaged the Khmer Rouge they defended this on the grounds of self defense. Vietnam argued that there were in fact two wars taking place, one the border war started by the Khmer Rouge and the other a revolutionary war carried out by guerrilla forces who intended to overthrow their rulers. The problem with this defense was that Vietnam could not rely on Article 51 of the U.N. Charter as any response has to be proportionate to the initial attack, and no one took seriously the claims that the Pol Pot regime was overthrown by Cambodian guerrilla forces.

It is probable that the Vietnam government believed that the international community would quickly forget its invasion of Cambodia due to the fact that it had overthrown a genocidal government but this proved to be incorrect. However, it has to be said that at no stage did Vietnam actually claim humanitarian reasons to justify the use of force, although it did point

out that it was the “inhuman policies” of the “monstrous regime of Pol Pot” that had led to the “revolutionary war of the Kampuchean people”.³²¹

Vietnam paid a heavy economic and political price for its action. It was named as an international pariah; its puppet government in Phnom Penh was denied a seat at the U.N.; and its action had the effect of uniting China, ASEAN and the west in a common front against it. In particular, the USA and its western Allies interpreted the Vietnamese action as a move in a game of Cold War politics; ASEAN feared that Vietnam’s use of force against Cambodia was the beginning of a Vietnamese drive for regional hegemony; and neutral and nonaligned countries worried that Vietnam’s action challenged international law, that is, the primacy of sovereignty and nonintervention into the affairs of another state.³²²

If the primacy of a humanitarian motive is a defining characteristic of a legitimate humanitarian intervention, then it can be argued that Vietnam's intervention into Cambodia fails this test as there is little evidence that human rights violations played a major part in its decision to intervene in Cambodia.³²³ Indeed, advocates of a motive's first approach argue that the rescue was merely a by-product of Vietnam's goals of achieving political dominance over Cambodia.³²⁴ However, the problem with a motives-first approach as the defining criterion of a humanitarian intervention ignores the question of humanitarian outcomes.³²⁵

A better approach to assess the legitimacy of Vietnam's intervention into Cambodia is to examine the criteria (just cause, last resort, a proportional use of force, and a high probability of obtaining a positive humanitarian

³²¹ Ibid., 88.

³²² Ibid., 86

³²³ Ibid., 105.

³²⁴ M. Bazzyler, "Re-Examining the Doctrine of Humanitarian Intervention in the Light of the Atrocities in Kampuchea and Ethiopia," *Stanford Journal of International Law* 23 (1987), 610.

³²⁵ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 106.

outcome) as set out in Chapter 5 of this dissertation. Based on these criteria it certainly can be argued that in many ways this was a humanitarian intervention, particularly when it is taken into account that the end result was the overthrow of a genocidal regime that had been responsible for up to one million deaths.

Tanzania / Uganda 1979³²⁶

This intervention began in October 1978 as a territorial dispute when, in pursuit of disloyal Ugandan troops, Ugandan troops invaded and occupied the Kagera Salient, that is, territory between the Uganda – Tanzania border and the Kagera River in Tanzania. Idi Amin, Uganda's president, justified the invasion and annexation of the Kagera Salient on the pretexts of self-defense and the restoration of Uganda's "rightful" boundary to the old colonial division between German and British spheres of influence.³²⁷ The Ugandan troops wreaked havoc in the Tanzanian territory, and 10,000 people were left unaccounted for.³²⁸

President Julius Nyerere of Tanzania considered the attempted annexation an act of war and on 15 November, launched an offensive against the Ugandan troops. Amin, fearing defeat, offered to withdraw from the occupied territories if Nyerere would promise to cease support for Ugandan dissidents and agree not to attempt to overthrow his government. By early December Tanzanian forces had forced the Ugandan forces back to the border but it was clear that Nyerere wanted more than a withdrawal of all Ugandan forces from Tanzanian territory. He felt that the possibility of repetition had to be avoided and if Amin would not renounce his seven year

³²⁶ The Background information was drawn in large part from Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force.*, Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, and Caroline Thomas, *New States, Sovereignty and Intervention* (Aldershot: Gower Publishing Company Ltd, 1985).

³²⁷ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 77.

³²⁸ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 113.

claim on the region then Tanzanian territorial integrity would still be under threat.

The Tanzanian strategy was twofold: firstly, to pursue and punish the invading battalions, and secondly to aid and abet in the overthrow of Amin from power by exile forces and internal opposition. Several exile groups united under the banner of the Ugandan National Liberation Front (UNLF) and were trained under Tanzanian direction. In January 1979, Tanzanian troops crossed into Uganda. Nyerere claimed that two wars were being fought in Uganda. The first was between Tanzanian and Ugandan soldiers for the defense of Tanzanian territory and as a punitive measure for the atrocities committed against Tanzanian citizens in the Kagera Salient. The second was between the people of Uganda, that is, between the UNLF and its internal supporters against Amin and his supporters. By April, Tanzanian and UNLF forces had occupied Kampala and installed a new government.

To justify his actions Nyerere argued two cases. Firstly, it was argued that Tanzania's eviction of Ugandan forces from the Kagera Salient was justified as it met the criterion of self defence, because it was necessary to use force to repel the invaders, and that the amount used was proportionate to the initial attack.³²⁹ However, it is doubtful that this defence would have been accepted as it would have been difficult to justify continuing the attack once the invaders had been forced back across the border. Therefore, the second justification used was one of retaliation against Uganda for its action in invading Tanzanian territory even though the U.N. Charter provides no legal provision for reprisals.³³⁰

³²⁹ Ibid., 119

³³⁰ Ibid., 121

EAST AFRICA**Map 3. Tanzania and Uganda****Source: United Nations Cartographic Section**

What wasn't argued was Amin's brutal rule. During his eight year dictatorship Amnesty International estimated that up to 300,000 people had been killed.³³¹ There had been a complete breakdown of the rule of law as government forces killed and tortured civilians with impunity forcing Ugandans citizens to live in daily fear for their security.

Within Africa Nyerere was strongly condemned by other states for a breach of the OAU charter which prohibited intervention into the affairs of another

³³¹ Franck, "Interpretation and Change in the Law of Humanitarian Intervention." 219.

African state. Although Nyerere had championed a change of the OAU Charter so that it did not shelter dictators like Amin, at the time he was not prepared to argue that human rights abuses legitimated armed intervention by outside states.³³² Despite this he did issue a statement describing Amin as "an abominable murderer of the people of Uganda" and which also detailed the atrocities of his eight years in power.³³³

The significant difference between Tanzania's intervention into Uganda and the two cases discussed above is that this conflict was never debated by either the U.N. Security Council or the General Assembly. Although little time separated this instance from the Vietnam/Cambodian action the international reaction was very different. The USA resumed normal diplomatic relations with the new government in Kampala and suspended the trade sanctions that had been previously imposed on Uganda because of its human rights abuses. Similarly, Britain recognised the new Ugandan government and expressed approval that the Ugandan dictator had been removed from power. Many other states also recognised the new government which was in contrast to their non-recognition of the PRK government in Phnom Penh but reflected the fact that no Cold War politics were involved. Within a short period of time many African governments had also recognized the new Ugandan government. Tanzania was, however, strongly condemned by the outgoing OAU Chairman, Gaafar Mohamed Numeiry, the President of the Sudan, at a heads of state meeting held at Monrovia on 17-21 July 1979. He told the delegates that Uganda had shown a readiness to cooperate but that despite this Tanzania was only interested in obtaining the OAU's condemnation of Amin. The clear inference from this was that it was Nyerere's intransigence that was responsible for the war, which Numeiry described as "a sad precedent in Africa" as the use of force

³³² Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 118.

³³³ *Ibid.*, 126.

was a clear violation of the Organisation's charter, which prohibited interference in other people's internal affairs and invasion of their Territory by armed force.³³⁴

Despite this it is possible to argue that Tanzania's intervention into Uganda met the threshold requirements of a legitimate humanitarian intervention as detailed in Chapter 5. Amin's abuses against the people of Uganda produced a supreme humanitarian emergency giving just cause for intervention. Further, given Amin's grip on power in Uganda it was apparent that indigenous forces were incapable of putting an end to the atrocities and, therefore, the Tanzanian intervention was the last resort. Without Amin's removal from power there was no ending the abuses or restoring the rule of law and, therefore, the use of force was proportionate to the scale of violations it ended.³³⁵ Finally, with the removal of Amin, there was a high probability of obtaining a positive humanitarian outcome.

Humanitarian Intervention Or Not?

Two questions arise out of these interventions. Could these interventions have been justified on humanitarian grounds at the time, and would they be considered humanitarian interventions if they occurred today? Each intervention was a contravention of international law as they violated Article 2(4) of the U.N. Charter. None were authorised by the U.N. Security Council, and none qualified totally as a case of self-defense under Article 51 of the Charter.³³⁶ Although a considerable base of international law relating to humanitarian intervention had been established since World War II, there had been no major interventions for this purpose and the relationships between states were dominated by the geopolitical requirements of the Cold

³³⁴ African Contemporary Record, 12 (1979-80), A61 quoted in *Ibid.*, 126

³³⁵ *Ibid.*, 132.

³³⁶ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 71-81

War, in particular the relationships between the United States and Western Europe, the Soviet Union and China.

At the time, and even today, all these interventions would be difficult to justify on legal grounds. As discussed in Chapter 4, Article 2 (4) of the U.N. Charter states "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" and clearly, all three invading states breached this article. The only defense available in the U.N. charter in the circumstances would be Article 51 which gives a member "the inherent right of individual or collective self-defence if an armed attack occurs against a Member". In all three cases this was used as a justification but it is generally accepted that the action of self-defense must be proportionate to the attack, and in each case the intervening nations went far beyond the bounds of self-defense by pursuing their actions until the existing government had been overthrown.

It is worth noting that there was little attempt to legitimate the interventions nor was there apparent support for the idea of a humanitarian intervention in these cases at the time. After India's intervention into East Pakistan the matter was debated in the Security Council and despite overwhelming support for a resolution demanding India's immediate withdrawal it was only because of a Soviet Union veto that the matter was not passed. However, three days later, by a lopsided majority of 104 to 1 with 10 abstentions, the General Assembly passed essentially the same text.³³⁷ Similarly, a resolution condemning Vietnam's invasion of Cambodia was overwhelmingly supported by thirteen of the fifteen council members, but

³³⁷ Franck, "Interpretation and Change in the Law of Humanitarian Intervention." 217.

vetoed by the Soviet Union.³³⁸ It was only in the case of Tanzania's intervention into Uganda that there was no action by the United Nations, and general acceptance by the international community that Idi Amin's removal was positive. These proceedings can be seen largely as a result of Cold War politics, as the United States, the Soviet Union, and China all had vested interests in the India/Pakistan and Vietnam/Cambodia confrontations and the non-aligned states strongly supported non-interference into the internal affairs of another state.

As for U.N. authorisation, Cold War politics would have made this impossible, as can be seen by the debates after the events in which there was no agreement between the major powers. Today the case may well have been different. In all three cases there had been major crimes against humanity (if not genocide) resulting in a massive loss of life. It may be more likely today that the U.N. would authorise action under Chapter VII of the U.N. Charter because of the expanding norm of the "responsibility to protect". However, this is far from assured.

If the contemporary legal justification for these interventions is doubtful, what is the position morally? Chapter 4 proposed that humanitarian intervention could be justified on moral grounds by utilising the Just War concept and, therefore, these interventions will now be evaluated against the criteria developed by Nicholas Wheeler and the ICISS³³⁹ to determine whether these could be considered as a humanitarian interventions.

The first criterion is a just cause (a "supreme humanitarian emergency"). There is little doubt that this was present in all three cases. In East Pakistan approximately 1 million people were killed and millions of refugees fled

³³⁸ Ibid., 218

³³⁹ Four of the criteria are common but the ICISS stipulates two additional criteria. See Chapter Four and Five for full details.

across the border into India in fear of their lives. In Cambodia, 1 to 2 million had died of malnutrition and disease and 300,000 were killed for political reasons. Over 300,000 were killed in Uganda during Amin's eight year rule and many more were tortured.

The second criterion is last resort. Pakistan, Cambodia, and Uganda were inflexible in their attitudes to outside interference in their internal affairs and would have strongly resisted any interference into their internal affairs. Therefore, these interventions can be definitely categorised as the last resort. The third criterion is a proportional use of force. As the only way to end these humanitarian disasters was the removal of the existing governments, the level of force utilised can be considered proportionate, as it was the minimum requirement to force a change of government. Wheeler's final criterion is a high probability of obtaining a humanitarian outcome (reasonable prospects). Although in hindsight it is possible to say that the outcomes, particularly in Uganda, were not all they could have been, it is reasonable to say that at the time the prospect of any new government would have been an improvement over the current situation and, therefore, a reasonable prospect.

Taking these criteria into account it is possible to claim that these interventions would have qualified as humanitarian. However, before accepting this as gospel it is necessary to examine the two additional criteria developed by the ICISS and used as a basis for "the responsibility to protect". The first of these additional criteria is the right intention (the purpose of intervention). Certainly at the time, except in the case of India, the stated intention was not humanitarian if the most rigorous view of the motivations is taken.

However, as discussed in Chapter 4, this criterion raises difficulties in arriving at a case of pure intention. It was argued that the true test is whether the intervention has put an end to human rights deprivations, even if there are other non-humanitarian reasons behind the intervention. In these cases it could be argued that a humanitarian intention was not claimed because it was known that it would not be accepted by the international community in the environment of the time. There is a strong possibility that, if these cases occurred today, the claim of humanitarian intervention would be accepted as the right intention.

The final criterion is right authority (multilateral action). In none of these cases was this criteria met, as the only right authority accepted for humanitarian intervention is United Nations' approval and, as has been shown, not only did these interventions not have that approval, but the interventions of India and Vietnam were both criticised after the event. The question then becomes would those interventions have been approved today. It is difficult to say. Neighbourhood countries have been involved in interventions, (for example, Australia into East Timor and the Solomon Islands and Nigeria into Sierra Leone and Liberia), but these interventions were in conjunction with regional organisations and/or the United Nations. Certainly any intervention by a solitary state, even on humanitarian grounds, would be regarded with unease by the international community.

The final element of justification, outlined in Chapter 5 was legitimacy which can be seen as a more subtle moral justification. It can be argued that an intervention is justified (though unlawful) when it is necessary for a humanitarian disaster to be averted and is supported by a core value of the international legal system itself. Four criteria were established for the legitimacy of unauthorised interventions: just cause (best regarded as a supreme humanitarian emergency); last resort; a proportional use of force;

and a high probability of obtaining a positive humanitarian outcome. That is, the justification clearly expresses a commitment to values embodied in the legal system, in addition to those of morality, in this case the protection of the international legal human rights.³⁴⁰ While it was hard at the time to claim legitimacy for the actions of India, Vietnam and Tanzania on this basis, if the situation was replicated today it is certainly possible that the interventions may be accepted as legitimate in a similar manner to the NATO intervention into Kosovo.

Conclusion

This chapter has examined three interventions that occurred during the Cold War to assess to what degree they might have been defensible as humanitarian in modern terms and to determine their value in analysing humanitarian intervention in the 21st century. At the time, these interventions occurred, international politics was more strongly based on the traditional rules of sovereignty, non-intervention, and non-use of force. Additionally, during the Cold War, the differences in the international politics of the great powers, namely, the United States, the Soviet Union and China, more often than not, thwarted the international community in agreeing to a mutual position on many issues, including the possibility of humanitarian interventions.

Of the three interventions, only India raised humanitarian claims to justify its use of force, but when this failed to secure any legitimisation from the international community, India never mentioned it again. However, what is important is that it felt able to raise this defense in the first place and it was the norms created by international humanitarian law that allowed India to

³⁴⁰ Allen Buchanan, "Reforming the International Law of Humanitarian Intervention," in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 132.

attempt to mount this justification. Although humanitarian intervention was not accepted as a justification for India's intervention into East Pakistan, it counts as humanitarian because it meets the requirements of the solidarist theory of Legitimate Humanitarian Intervention, namely, just cause, last resort, a proportional use of force, and a high probability of obtaining a humanitarian outcome.³⁴¹ Michael Walzer claims that the Indian action could be viewed as a good example of humanitarian intervention "because it was a *rescue*" and "its various motives converged on a single course of action that was also the course of action called for by the Bengalis."³⁴²

Vietnam's intervention into Cambodia is less clear-cut as Vietnam never tried to justify the intervention on humanitarian grounds. Indeed Vietnam's own record on human rights was poor and it may have been fearful that it could become a target for future humanitarian intervention. However, similarly to India's intervention into East Pakistan, Vietnam's intervention into Cambodia fulfilled the requirements of the just cause criterion, and, as in the case of East Pakistan, the intervention produced a relatively positive humanitarian outcome.

As in the previous two cases Tanzania's intervention into Uganda appears to meet the just cause criterion. It is also clear that Nyerere's motives for removing Amin were to secure the long-term safety of the Tanzanians and to avenge the heavy loss of life that occurred when Ugandan troops invaded the Kagera Salient. However, Nyerere had long been an outspoken advocate of humanitarian values on the African continent and, therefore, the existence of non-humanitarian motives need not undermine completely the humanitarian credentials of Tanzania's action.

³⁴¹ See Chapter 4.

³⁴² Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (London: Allen Lane, 1978), quoted in Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 5.

What needs to be noted is that none of these interventions fully met the requirements of the two additional criteria put forward by the ICISS. The first of these is the right intention. As we have seen both India and Tanzania had at least some humanitarian motives but it is difficult to say the same of Vietnam. However, as discussed in Chapter 4, this criterion is contentious and there are many interpretations of its exact meaning. This thesis has formed the view that the true test of intention is whether the intervention has put an end to human rights abuses, and if it has, then the criterion has been met even if there are other non-humanitarian reasons behind the intervention.

The second criterion is that of right authority (multilateral action). As detailed by the ICISS, interventions should be UN-authorized and multilateral in order to be legitimate.³⁴³ Indeed others have gone further by arguing that intervention should not be undertaken by hegemonic powers, but from an ethical standpoint it is not legitimate to argue that an intervention by a single state or hegemonic power is necessarily wrong.³⁴⁴ Although all three of these interventions were unilateral, there is an argument that, at the time no other course of action was possible, and thus this criterion alone should not undermine the humanitarian justification.

Even if all three of these cases are accepted as meeting many of the criteria for humanitarian intervention, they were not accepted as such at the time. It is possible, however, to see in them the beginning of the development of a new approach towards humanitarian intervention in which the boundaries of non-intervention are reappraised. Although the first two actions, that is India/Pakistan and Vietnam/Cambodia were condemned by the international community through U.N. resolutions, in the last case the U.N. acquiesced in

³⁴³ See also Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force*, 73 who argues that humanitarian intervention now must be multilateral to be legitimate; without multilateralism, claims of humanitarian motivation and justification are suspect.

³⁴⁴ "The Responsibility to Protect: Research, Bibliography, Background."

the occupation of Uganda by Tanzania. Indeed, whatever Tanzania's formal pretext, as this chapter has shown, many states recognised that the action constituted a very significant humanitarian intervention.

Although the utility of these three interventions as precedents is debatable there has been a number of cases since where the international community has, in a similar way to Tanzania's invasion of Uganda acquiesced with little comment. In September 1979, France participated in the overthrow of Jean-Bédél Bokassa of the Central African Empire. The U.N. greeted this obvious violation of Article 2(4) with silence. Once again there was evidence of massive violations of human rights and it is in this context that the international community's acquiescence can be understood.

The U.N. also acquiesced in silence when British, French, and U.S. forces intervened in the Kurdish regions of northern Iraq in 1991, when up to 3 million refugees fled the area. Similar acquiescence was evident when West African regional forces intervened in the vicious civil wars raging in Liberia and Sierra Leone.³⁴⁵ In none of these cases had the intervening state or organisation followed the rules laid down by Charter in Article 2(4). Therefore, there is the beginning of a precedent for humanitarian action to be undertaken outside of the international legal framework in cases of supreme humanitarian emergencies. These interventions, although certainly not considered as such at the time, in many aspects, reflect the concept of "the responsibility to protect". Without doubt this was not the only, or indeed necessarily, the main motivation behind the interventions, but common to each of them was the partial resolution of a humanitarian emergency and this was to have implications, at least indirectly, for the future.

³⁴⁵ See Chapter 9 for a more detailed analysis of these two cases.

Somalia, Rwanda and Srebrenica: A Steep Learning Curve?

Three U.N.-authorised interventions in the first half of the 1990s, into Somalia, Rwanda and Bosnia and Herzegovina, had results that impacted on future humanitarian interventions both positively and negatively. Although the United Nations Security Council had authorised an intervention to assist the Kurds in northern Iraq in the aftermath of the 1991 Gulf War, it was the U.N.-authorised intervention into Somalia and, in particular, the U.S. involvement that suggested that humanitarian intervention was obtaining a new legitimacy in the post Cold War environment. Although the rationale for each intervention was different, each was intended to prevent a humanitarian emergency. However, each failed in significant ways to accomplish its intentions and, as a result, not only was there a significant loss of life but also an impact on future interventions. It was principally as a result of these interventions that the international community recognised that "never again" could events of this nature be permitted to happen and began to adopt the idea of "the responsibility to protect" which was outlined in Chapter 5 of this dissertation.

The intervention in Somalia was historic because it represented the first time that the Security Council had authorised a Chapter VII intervention for explicitly humanitarian reasons, into what today would be considered a failed state. Unfortunately, the loss of eighteen U.S. Rangers in a engagement in October, 1993 had disastrous consequences, as it made the U.S. administration cautious of intervening in subsequent situations. Intervention into Somalia can be considered a failure as it did not restore peace and order

which was necessary before there could be a long-term commitment to state-building, without which humanitarian interventions may have little effect.

For the first time since World War II Rwanda raised the spectre of clear and explicit genocide, and despite the U.N. Convention on Genocide and the presence of the United Nations troops in Rwanda to implement a peace agreement between the Hutu and the Tutsi combatants of a civil war, over 800,000 people were slaughtered in three months in 1994 in sectarian violence. Rwanda was a major failure on behalf of the international community as represented by the United Nations, and also by individual states who refused to become involved despite overwhelming evidence that a genocide was occurring.

Barely twelve months after the disaster in Rwanda and despite the presence of U.N. peacekeepers, Bosnian Serb forces seized the safe area of Srebrenica which was home to 40,000 Muslim men and women and children. They then separated the Muslim men and boys from the women and, in the largest massacre in Europe in 50 years, slaughtered some 7,000. As in the case of Rwanda, the reaction of the international community was inadequate but, on a positive note, it did strengthen the lobby for intervention by the United States, as there was an increasing awareness that non-confrontation was politically untenable.

Each of these cases, even if they were failures at the time, had important implications for the development of humanitarian intervention as it moved towards the 21st century. Somalia was, and remains, a failed state and demonstrates that if failed states are to be assisted, that long-term planning and assistance in state-building is required, although this is dependent on the establishment of peace and order. Both Rwanda and Srebrenica demonstrate that diplomacy has limits and that, on occasions, force is necessary to achieve

humanitarian outcomes. Although the United Nations may be necessary to authorise peacekeeping or peacemaking missions, both these cases demonstrate that, if the United Nations does not receive backing from the major powers, these missions are more likely to fail.

Somalia³⁴⁶

The origins of the disintegration of the Somali state, created in 1960 by a union of Italian and British colonies, lie in the breakdown of the traditional society and the role of the country as a Cold War proxy of both the United States and the Soviet Union in their battle to control of the strategic Horn of Africa. The removal of the long-time Somali leader, Mohammed Siad Barre, in January 1991 created a power vacuum which resulted in anarchy, violence and clan-based civil war. Talks held in Djibouti in June and July of 1991 ended in the Djibouti Accords and the appointment of Ali Mahdi Mohamed as interim president. However, the leader of a rival faction General Mohammed Farrah Aideed, rejected the accords and the fighting continued particularly around the capital Mogadishu.³⁴⁷

In January 1992 the International Committee of the Red Cross reported that hundreds of thousands of refugees from the conflict were on the brink of starvation in camps south of the capital and at the end of January the U.N. Commissioner for Refugees reported that 140,000 Somali refugees had reached Kenya, with another 700 arriving each day.³⁴⁸

³⁴⁶ The background information was drawn in large part from: International Crisis Group Conflict History: Somalia, available from <http://www.crisisgroup.org>, BBC News Timelines, available from <http://newsvote.bbc.co.uk>.

³⁴⁷ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*, 140.

³⁴⁸ *Ibid.*, 140.



Map 4. Somalia

Source: United Nations Cartographic Section

Although the Security Council had taken no action to stop Somalia's tumble into chaos during 1991, the growing disarray galvanised the Security Council into action. On 23 January 1992 it unanimously adopted Resolution 733, which declared that Somalia's internal conflict constituted a threat to international peace and security, a finding that enabled the Council to authorise an arms embargo under Chapter VII of the Charter, and authorised the Secretary General to increase humanitarian assistance and to work with

the OAU and Arab League to achieve a ceasefire.³⁴⁹ Although the principles of a ceasefire were agreed in March, this proved to be optimistic and Mogadishu collapsed into a state of general lawlessness.

However, with the consent of the two competing factions, UNOSOM³⁵⁰ was deployed in Somalia in April 1992, but it was not able to implement its mandate to assist in the provision of humanitarian assistance to the starving population because of the failure of various factions to cooperate.³⁵¹ Subsequently, approval was given in August 1992 for the provision of 3,500 military UNOSOM personnel for the protection of the humanitarian relief efforts, but the situation continued to deteriorate and in October 1992 the Secretary General reported that almost 4.5 million of Somalia's 6 million people were threatened by severe malnutrition and related diseases.³⁵²

Despite this authorisation, only 500 Pakistani peacekeepers were eventually deployed and they managed to take control of Mogadishu Airport in early November, thus facilitating the U.S. airlift of humanitarian aid. Although the resolution authorising the deployment of the peacekeepers was passed under Chapter VII, the Pakistani soldiers were only for self-defense and did not venture from the Airport. At this stage the United States asked for a mandate to send 30,000 troops to Somalia to provide armed protection for relief operations which was approved by Resolution 794 of the Security Council.³⁵³ This vote represented a breakthrough as it was the first time that the United Nations had decided to intervene militarily for strictly humanitarian purposes and was also seen by the United States as an important step towards a "post cold war world order."³⁵⁴ Twenty four hours after the vote

³⁴⁹ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 176.

³⁵⁰ United Nations Operation in Somalia.

³⁵¹ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 141.

³⁵² Ibid.

³⁵³ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 178.

³⁵⁴ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 143.

U.S. president George Bush ordered 28,000 troops into Somalia in Operation Restore Hope (also known as UNITAF³⁵⁵).³⁵⁶ The U.S. Marines landed on 9 December 1992.

From the beginning, the U.S. had viewed the intervention as limited to facilitating the delivery of humanitarian aid, and not as the Secretary General, Boutros Boutros-Ghali, wanted, a force to disarm the warring factions, as had been authorised in Resolution 794 which empowered UNITAF to “use all necessary means” to create a secure environment for the delivery of humanitarian aid.³⁵⁷ In May 1993 the U.S. turned the operation over to an expanded UNOSOM (UNOSOM II) but when 24 Pakistani soldiers were killed while inspecting weapons dumps, the U.N. passed a further Resolution 837 ‘reaffirming’ that the Secretary General was authorised to “take all necessary measures against those responsible for the armed attacks... to establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment.”³⁵⁸

In effect this was a declaration of war against General Aideed’s militia and a series of confrontations followed. This cumulated in a battle on October 1993, when U.S. Rangers and Delta Force commandos made an unsuccessful attempt to capture Aideed. Three U.S. Blackhawk helicopters were shot down and eighteen Americans and one Malaysian were killed. Additionally, a dead U.S. pilot was dragged through the streets of Mogadishu which had a dramatic effect on American public opinion. The United States withdrew its peacekeeping forces in March 1994, the U.N. mission focused on food relief and distribution only. The last of the U.N. peacekeepers left in March 1995.

³⁵⁵ Unified Task Force

³⁵⁶ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 142

³⁵⁷ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 189.

³⁵⁸ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 143.

Despite continued efforts to reach a political settlement, Somalia remained an anarchic state without a central government, with at least five different men claiming to be president of various portions of the country, and scores of warlords who divvied up virtually every city block and remote village for themselves.³⁵⁹ Peace talks in 2004 – 2005 in Nairobi established a transitional government but the country remains divided and the provisional leader, Abdulla Yusaf, is restricted to Baidoa, north of Mogadishu, and he is unable to move to, let alone exert any influence over, the ostensible capital, Mogadishu.

The intervention into Somalia was significant in the evolution of the Securities Council's thinking on the legitimacy of humanitarian intervention as it was the first time that it had authorised the use of force under Chapter VII to achieve humanitarian outcomes. However, the outcome of the intervention was only a partial success as there was no agreement between the parties concerning the relationship between short-term and long-term humanitarian outcomes. The short term outcome, the subject of Resolutions 733 and 746, and the reason for the original intervention was to prevent widespread starvation within Somalia. All the parties were in agreement with the goal and, to a large extent, it was accomplished in the first six months of 1993.

The expansion of the mandate (in Resolution 814) was unprecedented in U.N. history as it authorised the use force under Chapter VII to implement the following: to create a secure environment throughout Somalia; to promote political reconciliation; to establish the rule of law; to ensure compliance by all Somali parties; and to assist in the repatriation of refugees and the resettlement of displaced persons.³⁶⁰ In fact, it committed the

³⁵⁹ Marc Lacey, "The Lesson of Somalia: Just a Humpty Dumpty Story," *New York Times*, 26 November 2003.

³⁶⁰ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*. 193.

international community to rebuilding a failed state. Such a commitment requires long-term planning and the determination to remain committed to these goals but the deaths of the U.S. Rangers in the raid against Aideded soured public opinion in the United States resulting in the withdrawal of all US forces.

This intervention set precedents about use of force to solve a humanitarian problem. It complied with all of the legal and moral justifications set out in Chapter 4 of this dissertation. Although, it achieved its short-term goals of alleviating starvation, overall, it must be seen as a failure as Somalia remains a failed state. It failed because none of the U.N. member countries were prepared to persevere in the face of casualties. This was to have immediate implications as, when an extreme disaster occurred a month after the U.S. withdrawal, memories of the events in Somalia played a large role in preventing action to thwart a genocide in Rwanda.³⁶¹

³⁶¹ After fifteen years of recurring violence and absent leadership, Somalia is the epitome of a failed state. In much of the country, and in Mogadishu, in particular, warlords have ruled by force accumulating vast wealth through the control of ports, roads and airfields. The transitional government (The Somalia Transitional Federal Institutions [TSI]) was formed in Kenya in 2004, but was unable to return to the country until February 2006, and when they did so it convened in the city of Baidoa, and not the capital, Mogadishu.. Somaliland in the north of the country, declared independence 15 years ago and, although not recognised, operates as an independent and state. A Union of Islamic Courts (Islamic Courts were formed by the clans and businessmen to provide a modicum of law and order in their communities), was formed to restore peace and stability to Mogadishu and in June 2006, it expelled the warlords from the capital. It is hoped that they will negotiate with the transitional government but the situation remains in flux and a permanent settlement as far away as ever.

Rwanda, 1994³⁶²

The genocide in Rwanda was ignited when the plane carrying Rwandan President Juvénal Habyarimana was shot down by a surface-to-air missile while approaching Kigali Airport on 6 April 1994. Fighting broke out within hours and by the end of the next day militant Hutus had murdered the prime minister and seized control of the government, claiming that Habyarimana had been assassinated by Tutsi rebels. Encouraged by the Hutu government the *Interhamwe*, predominantly Hutu militants trained by the national army and organised as the youth wings of the major Hutu party, began killing Tutsis and moderate Hutus mainly with machetes. By the time the killing abated in late June over 800,000 men and women and children had been killed and a further 1.5 million of Rwanda's population had been displaced. The questions must be asked: could the Rwandan genocide have been prevented and did the international community do everything that it could to prevent this tragedy?

Although the genocide roots lay in Rwanda's colonial past, its more immediate cause was a civil war that first flared in October 1990. This was fought between the Hutu government forces and the Tutsi-led Rwandan Patriotic Front (RPF), which launched an invasion from Uganda. Following negotiations in the Tanzanian town of Arusha a peace agreement was signed in August 1993. To monitor the implementation of the ceasefire, and the establishment of a transitional government, the Security Council agreed on 5 October in Resolution 872 to establish the United Nations Assistance Mission

³⁶² The background information was drawn in large part from: International Crisis Group Conflict History: Rwanda, available from <http://www.crisisgroup.org>, BBC News Timelines, available from <http://newsvote.bbc.co.uk>, and "Leave None to Tell the Story: Genocide in Rwanda," (Human Rights Watch, 1999), available from <http://www.hrw.org/reports/1999/rwanda/>, and Romeo Dallaire, *Shake Hands with the Devil* (New York: Carroll and Graf Publishers, 2005).

for Rwanda (UNAMIR).³⁶³ UNAMIR's mandate was granted under Chapter VI of the U.N. Charter to monitor the ceasefire and oversee the implementation of the Arusha Accords, but it had no authority to act in a peace enforcement role, or to impose the agreement, or to protect human rights. It is necessary to understand that, only two days before the Council discussed whether to send a peacekeeping force to Rwanda, the eighteen U.S. Rangers had been killed in Somalia. This had created a powerful backlash in the USA against participation in, and support for, U.N. operations. As a result the mission was deprived of the funds and support it needed to make it viable.³⁶⁴ Both Belgium and France had both the resources and the historical linkages to assist, but as will be discussed later, Belgium withdrew its contingent of peacekeepers after 10 of its troops were killed as the genocide began, and France took no action for almost 3 months, by which time there had been a massive loss of life.



Map 5. Rwanda

Source: United Nations Cartographic Section

³⁶³ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 214.

³⁶⁴ Ibid., 215.

Additionally, the U.N. was seriously overstretched and preoccupied with operations in Bosnia and Somalia at the time the Rwandan mission was established. As such, the under-funded U.N. mission only had a mandate to monitor the ceasefire, and this was a powerful message to extremists that they could act with impunity. Although not funded, the UN commander, General Dallaire, established an unofficial intelligence unit within UNAMIR to collate information on the activities of the extremists. In this way he received a critical piece of intelligence that the extremists planned to precipitate the withdrawal of UNAMIR by killing the Belgian contingent of peace-keepers and begin the slaughter the Tutsi in Kigali at an estimated rate of 1,000 every twenty minutes by using the militia units.³⁶⁵ On 11 January, Dallaire cabled the U.N.'s Department of Peacekeeping Operations (DPKO) with this warning and requested permission to be allowed to seize the weapons.³⁶⁶ Kofi Annan, at the time the Under-Secretary General for Peacekeeping Operations, took General Dallaire to task for even considering raiding the weapons cache and ordered him to suspend the intelligence operation immediately. Additionally, he reiterated the limits that the U.N. was placing upon him as force commander of a Chapter VI peace-keeping operation. Not only was UNAMIR not allowed to conduct deterrent operations, but it was also to provide the information it had obtained to the government of President Habyarimana in the interests of transparency.³⁶⁷ There is little doubt that the deaths and injuries suffered by the Pakistani Blue Berets and the American Rangers in Somalia had had a major impact, not only on the DPKO, but also on many member nations. There was simply no enthusiasm for any operation that might lead to casualties – and the

³⁶⁵ Power, *"a Problem from Hell" America and the Age of Genocide.*, 343.

³⁶⁶ Dallaire, *Shake Hands with the Devil.*, 145.

³⁶⁷ *Ibid.*, 146.

whole atmosphere within and the surrounding the DPKO was risk-adverse.³⁶⁸

In hindsight, it is clear that the DPKO's negative response to Dallaire's request to be allowed to use force was the crucial turning point. In addition to responding to Dallaire, the DPKO also shared the warning with key members of the Security Council and instructed Dallaire to advise the French, Belgium and U.S. embassies, so that they could take the issue up with the Rwandan government. At the same time as the UN received its report, the U.S. state department received an analysis from the CIA that concluded that should the peace process collapse, over a half a million people would die in Rwanda.³⁶⁹

Despite these warnings, neither the U.S. or France, the permanent members who were both aware of the potential for genocide in Rwanda, tried to convene the Security Council to discuss the potential genocide. Indeed, only a day before the genocide began the Security Council met to discuss whether UNAMIR's mandate should be renewed for a further six months. After considerable discussion it was agreed in Resolution 909 that the U.N. Mission would be withdrawn in six weeks unless the transitional government was created as originally agreed.³⁷⁰ Additionally, no consideration was given to the potential genocide to which it had been alerted. Certainly there was nothing in this resolution to make the extremists think that the U.N. was prepared to intervene forcibly against them.

Could the international community at this stage have justified strengthening the intervention into Rwanda? The existing intervention was based on the

³⁶⁸ Ibid., 147.

³⁶⁹ If Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, 216.

³⁷⁰ Ibid., 217.

U.N. mission fulfilling a peacekeeping role between the RGF³⁷¹ the RPF. However, there was considerable evidence available that if the level of intervention was not increased, the result would be a major genocide. The existing intervention was legal as it was authorised by the United Nations, and any increase in the number of forces, plus an amended mandate under Chapter VII to allow for enforcement, would have been justified although, it should be noted, that at the time there was no precedent for the use of Chapter VII in circumstances such as this. However, in late April countries such as Czechoslovakia, Spain, New Zealand and Argentina sought information beyond that supplied by the Secretariat and became convinced that the slaughter was a genocide that must be stopped. At that stage they pushed the Security Council to support a peacekeeping operation with a stronger mandate to protect civilians.³⁷² Had these nonpermanent members been informed earlier, such as on 11 January, it is possible that they would have called for further measures at the time to prevent the potential genocide. But this did not occur and the killing began on the streets of Kigali on 6 April 1994. The response of the Security Council, and indeed of the international community as a whole was, to say the least, unimpressive.

On 7 April ten Belgium troops assigned to guard the Prime Minister were killed and as a result Belgium stated its intention to withdraw its 440 troops from UNAMIR. The Secretary-General then made a report to the Security Council in which he claimed that UNAMIR's position had become impossible and he outlined three alternatives for the council's consideration: a massive reinforcements of UNAMIR to force the sides into a ceasefire; a reduction of the UN's commitment to a small group headed by the force commander and supported by staff of about 270, which would attempt to bring about an agreement on a ceasefire; or a complete withdrawal. Even at

³⁷¹ Rwandanese Government Forces (Hutu dominated Rwandan Government Army).

³⁷² "Leave None to Tell the Story: Genocide in Rwanda."

this time it can be seen that the UN's main concern was enforcing the ceasefire, not in preventing a potential genocide. The council decided to adjust the mandate of UNAMIR in resolution 912 and voted to reduce the force to 270 members.³⁷³ The US played a major role in the UN arriving at this decision and its policy during April has been described as "no US military intervention, robust demands for a withdrawal of all of Dallaire's forces, and no support for a new UN mission that would challenge the killers."³⁷⁴ In fact, the United States Secretary of State, Warren Christopher, sent UN Ambassador Albright one of the most forceful documents produced in the entire three months of the genocide. In it Christopher instructed Albright to demand a full UN withdrawal saying that United States had taken into account the humanitarian reasons put forth for the retention of UNAMIR, and had found that there was insufficient justification to retain a UN presence:

The international community must give highest priority to full orderly withdrawal of all UNAMIR personnel as soon as possible... We will oppose any effort at this time to preserve a UNAMIR presence in Rwanda... Our opposition to retaining a UNAMIR presence in Rwanda is firm. It is based on our conviction that the Security Council has an obligation to ensure that peacekeeping operations are viable, that they are capable of fulfilling their mandates, and that UN peacekeeping personnel are not placed or retained, knowingly, in an untenable situation.³⁷⁵

This decision sealed the Tutsis' fate and signalled to the Hutu military, and the *Interhamwe*, that they would have a free rein to continue the killings. By 21 April only 503 peacekeepers remained. As the situation deteriorated the Secretary-General urged the council to reconsider its position. On 17 May, the Council adopted Resolution 918 which authorised the expansion of

³⁷³ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*, 145.

³⁷⁴ Power, *"a Problem from Hell" America and the Age of Genocide*, 367.

³⁷⁵ Quoted in *Ibid.*, 367-8.

UNAMIR forces to 5,500, but strong lobbying by the United States ensured that this would take place in two phases, the first comprising only 150 unarmed observers and an 800-strong Ghanaian battalion to secure Kigali airport. During this entire period there had been an effort to deny the magnitude of the humanitarian crisis. Despite the Secretary General's report of May 1994, the United States and other governments resisted using the term genocide as it would have made their policies of inaction unsustainable.³⁷⁶ It was not until 8 June that the Council, while endeavouring to accelerate the deployment of the expanded UNAMIR, noted that reports indicated that acts of genocide had occurred in Rwanda.

When the Secretary-General estimated that UNAMIR would be unable to undertake its full mandate until August, France announced that it was prepared to intervene in Rwanda to put an end to the massacres and to protect groups threatened with extinction. This offer was met with some suspicion due to France's role in arming and training the Hutu government forces but was authorised by the Security Council, under Chapter VII, to conduct an operation aimed at contributing to the security and protection of displaced persons, refugees and civilians at risk, using all necessary means to achieve these humanitarian objectives.³⁷⁷ It has been estimated that the French intervention may have saved 15,000 to 17,000 lives. How many it might have saved if it had acted sooner is impossible to judge.³⁷⁸

While the intervention in Rwanda can be considered an abject failure by the international community to prevent, not only a humanitarian disaster but also a genocide, it did provide three lessons on how to avoid such disasters in the future. Firstly, in the months leading up to the genocide, despite numerous warnings from its mission and other sources, the United Nations

³⁷⁶ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*.. 146.

³⁷⁷ Ibid.

³⁷⁸ "Leave None to Tell the Story: Genocide in Rwanda."

never considered changing the mandate of UNAMIR from a peacekeeping operation under Chapter VI of the Charter, to a forceful preventative humanitarian intervention under Chapter VII. Similarly, countries such as United States and France who had intelligence on the situation did not take any action to encourage the UN to take a stronger stand. Additionally, even after the killings started there was a reluctance on behalf of both the United Nations and international community to take action until several hundred thousand Tutsis had been killed. When the killings started in Kigali there were approximately 7,000 Rwandan army forces in the vicinity of the capital but only 1,500 to 2,000 elite troops, backed by some 2,000 militia, carried out most of the killings. The commander of the Belgian contingent of peacekeepers concluded that the UN troops would have been strong enough to halt the violence if they had been authorised to do so. General Dallaire also agreed that a joint force could have halted the killing and that he was prepared to lead the peacekeeping soldiers into action.³⁷⁹

Secondly, it must be accepted that stopping genocide or a humanitarian disaster requires a willingness to use force and to risk soldiers' lives. However, in this instance the UN sought, primarily, to protect its forces from harm. Indeed Dallaire was ordered to make avoiding risk to soldiers a priority, even if this was at the expense of saving Rwandan lives.³⁸⁰ This was reflected in one dramatic case where nearly 100 Belgian peacekeepers abandoned some 2,000 unarmed civilians, leaving them defenceless against attacks by militia and military. As the Belgians went out one gate, the assailants came in the other. More than 1,000 Rwandans died there or in flight trying to reach another UN post.³⁸¹

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Ibid.

Finally, Rwanda demonstrated that if the action was to be successful it needed support from major powers as well as the UN Secretariat. In this case all must share some of the blame for the failure. As the world's only superpower the role of the United States is crucial in events such as these. However, due to the events in Somalia, that occurred just prior to the Rwandan genocide, the Clinton administration was completely unwilling to use force or to risk soldier's lives and, therefore, did not seek changes to the UN's role that could have assisted in preventing or limiting the killings. Similarly, Belgium, which had troops in the peacekeeping mission in Rwanda, withdrew immediately after 10 were killed by the RGF. The other country that could have had an impact in the early period of the genocide was France, as it had been a strong supporter of the Hutu government in Rwanda. And no doubt retained some influence with the RGF. However, it was not until the killings had been underway for over two months that the French undertook to intervene to save lives in south-western Rwanda.

During all the period of the genocide the African state took no action to prevent the massacres. As was seen in the case of Tanzania's intervention into Uganda, the member states OAU was strongly committed to the principal of non-intervention into the affairs of any African state, even when there was clear evidence of serious crimes of humanity being committed. Although some African states, in particular Ghana, had troops in the United Nations peace-keeping force, none were prepared to intervene directly to provide assistance to the Tutsis under threat, with the exception of Uganda which provided assistance to the RPF. Additionally, it is doubtful that any had the military capability to assist without logistics assistance from elsewhere.³⁸² This was highlighted in largely African-manned missions in

³⁸² This is demonstrated by the mainly African manned missions in Liberia, Sierra Leone, and the Democratic Republic of the Congo which have needed to rely on logistical assistance from the US, UK, France and Germany. Additionally, the current AU mission to Darfur urgently requires outside assistance, most probably from the European Union to be effective.

Liberia, Sierra Leone, and the Democratic Republic of the Congo which have relied on logistical assistance from the US, UK, France and Germany. Additionally the current African Union Force in Darfur needs outside assistance which is likely to be provided through the UN and involve Western European forces.

As the African states were unwilling and ill-equipped to stop the genocide, and it was only the Western States that had the military capability to bring about a rapid end to the killing in Rwanda - a task they failed.³⁸³ Twelve months later the international community faced a similar situation in Bosnia and Herzegovina when the Bosnian Serbs massacred 7,000 men and boys at Srebrenica.

Srebrenica

On July 11 1995 twelve months after the end of the Rwanda genocide, Bosnian Serb forces overran the weak UN defences and seized the safe area of Srebrenica.³⁸⁴ Srebrenica had been under siege by the Bosnian Serbs for 11 months when, in an emergency late-night session on 16 April 1993, the UN Security Council voted to make it a safe haven and offer its protection to the besieged city. Under the resulting proposal, Srebrenica would become a centre for Bosnian Muslim refugees seeking safety from Bosnian Serb aggression.³⁸⁵

Srebrenica was one of six heavily populated patches of Muslim territory that the UN Security Council had sent lightly armed peacekeepers to protect. It

³⁸³ The Rwandan genocide influenced significantly the nature and intensity of two subsequent wars in the Democratic Republic of the Congo because in mid-1994 the former Hutu government fled into exile in the Congo taking with it more than one million Hutu Rwandans. An estimated 3 million people have since died in a conflict, most from war related disease and starvation. This is discussed in depth in Chapter 11 of this dissertation.

³⁸⁴ Bianca Jagger, "The Betrayal of Srebrenica," *The European*, 25 September-1 October 1995.

³⁸⁵ BBC News, "UN Makes Srebrenica 'safe haven'" Available from: http://news.bbc.co.uk/onthisday/hi/dates/stories/april/16/newsid_4253000/4253441.stm (Accessed June, 2006).

was hoped that these peacekeepers would deter Serb attacks, but it was also well known that the United States would not send ground troops, and that the European countries that had already deployed soldiers to Bosnia were reluctant to contribute any more peacekeepers to a failing UN effort.³⁸⁶ The Dutch forces that were deployed in Srebrenica had a tough time. Sensing that Western troops were squeamish about casualties after Somalia and Rwanda, the Bosnian Serb forces frequently aimed sniper fire at their positions. Additionally, by the time of the July attack the 600 Dutch peacekeepers were living off of emergency rations due to the fact that their supplies were often choked off by the Bosnian Serb forces. Although there was a provision for these forces to request air support, it was a cumbersome command and control arrangement that required approval from both the civilian head of the UN mission, and also the NATO commanders.³⁸⁷ When the Serbs launch the attack it went virtually unchallenged by the United Nations on the ground and by NATO jets in the sky.

The Bosnian Serb army commander, Ratko Mladic, announced on Bosnian Serb television "finally, after the rebellion of the Dahijas, the time has come to take revenge on the (Muslims) in this region".³⁸⁸ Over the next week the Muslim men and boys were separated from the women and killed. The result should not have been unexpected. For a considerable period the peacekeepers had realised that the Serbs would seize the vulnerable safe areas of eastern Bosnia. Indeed the UN force commander had unveiled a proposal at the Security Council to withdraw from these areas as he argued that the peacekeepers were too lightly armed and too few in number to protect Muslim civilians.

³⁸⁶ Power, *"a Problem from Hell" America and the Age of Genocide.*, 391.

³⁸⁷ Ibid., 392.

³⁸⁸ Quoted in Ibid.



Map 6. Bosnia And Herzegovina (Srebrenica) Source: United Nations Cartography Section

The reality was that the safe areas would be safe only as long as the Serbs did not attack.³⁸⁹ The significance of the genocide at Srebrenica was that it changed attitudes within the United States and led to NATO jets engaging in a three week bombing campaign against the Bosnian Serbs which began on August 30 1995. This was a significant contribution towards ending the war in Bosnia.

³⁸⁹ Ibid., 393.

Conclusion

Although all three of these interventions were very different, it is appropriate that they are considered together as they were to have significant impacts on the development of the concept of humanitarian intervention. Somalia was important in the first instance as it was the first time that the Security Council had authorised a Chapter VII intervention for explicitly humanitarian purposes. There were, however, two key defects in this intervention. The original objective in Somalia was primarily to relieve a humanitarian disaster caused by drought and little or no thought was given to the need for the rebuilding of the state apparatus which had collapsed due to internal strife between various warlords. What ought to have been clarified was the need for a long-term effort of state-building. This failure is reflected in the fact that, even today, there is no central government in Somalia despite extensive negotiations and the prospects for its future remain poor. Secondly, the loss of 18 US Rangers in a battle had a negative impact on American opinion and lead to the withdrawal of US forces. This was to have adverse consequences in the future as the United States became a wary of risking any of its citizens in the cause of humanitarian interventions.

The consequences of the failure in Somalia were reflected subsequently in the events in Rwanda and Srebrenica. The UN intervention into Rwanda was originally a peacekeeping mission to implement a peace agreement between the Rwandan Government Forces and the Rwandan Patriot Front and to establish a transitional government. However, once the killing began in Rwanda the mission needed to change in nature from a Chapter VI intervention to a Chapter VII intervention. However, there was a failure of will by the UN Security Council, the UN Secretariat, United States, Belgium and France and no action was taken until several hundred thousand people had been massacred. In Srebrenica a similar situation occurred when an

inadequate UN force was unable to defend innocent civilians from being killed by the Bosnian Serbs. Both these situations demonstrated that to prevent genocide or ethnic cleansing it is necessary to be proactive and to have adequate resources on the ground to respond to the threats.

These cases demonstrated that, when faced with such emergencies, the international community could respond in a timely and effective fashion to meet a recognised humanitarian crisis. All three cases illustrated that humanitarian interventions could be justified on legal and moral grounds as developed in Chapter 4. Additionally, the legality of the interventions was assured by the United Nations authorising them under Chapter VI or VII of the Charter. Further, they were morally justified and met all the criteria set out under the modified Just War tradition established by the ICISSS and confirmed by the UN in the report, *In Larger Freedom* and endorsed by Security Council resolution 1674 in April 2006.

Regrettably, despite the international community's good intentions in intervening, all three must be considered a failure. Somalia was left a failed state with no central government while in Rwanda and Srebrenica there were major acts of genocide that the interventions were too late to prevent. The latter two cases also demonstrate the need for a clearer agreement on the threshold for intervention. Particularly in Rwanda, the timing of the intervention was critical. As General Dallaire noted, earlier intervention by a well trained and equipped force may have prevented, or at least minimised, the large loss of life that occurred.³⁹⁰ But ultimately, these failures represented a lack of will on behalf of the international community and, in particular, the United States and other hegemonic powers. While the support of powerful states, the United States in particular, is necessary for Chapter VII interventions to occur it is essential that this support be maintained for a

³⁹⁰ Dallaire, *Shake Hands with the Devil*. 515.

considerable period if the intervention is to be successful. In these cases, only in Somalia was a major power involved, but when the situation deteriorated it withdrew and left an unresolved situation. In Rwanda, although France did intervene it did so only after there had been a massive loss of life. Although great power involvement does not guarantee success, it will be seen in the next chapter that it assists, particularly when it is used in conjunction with regional organisations, as was the case in Sierra Leone and Haiti.

The positive that arose out of these interventions is that they created a state of affairs in which the international community acknowledged that tragedies of this nature must never be allowed to happen again. Although it would take another ten years, this was eventually reflected in the UN Draft Outcome Document of September 2005, *In Larger Freedom*, which supported the emerging norm of "the responsibility to protect" by agreeing that "each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and that it was the further responsibility of states "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN Charter".³⁹¹ This document was endorsed by a Summit of Heads of Government at the Sixtieth General Assembly of the United Nations in September 2005 and a Security Council resolution in April 2006.

³⁹¹ UN Draft Outcome Document, September 13, 2005. Available from the http://www.un.org/summit2005/Draft_Outcome130905.pdf

Sierra Leone and Haiti: Persistence Pays

If the interventions into Somalia, Rwanda and Srebrenica must be considered unsuccessful as humanitarian interventions, the cases of Sierra Leone and Haiti are noteworthy as they provide evidence that the international community can intervene to obtain a positive outcome, although as both these cases demonstrate, it may take a long period of time and several interventions by various actors to achieve such an outcome. These two cases draw attention to the fundamentals of intervention that were outlined in the previous chapters.

As discussed in Chapter 1 there is no single definition of state failure. Unfortunately neither the Failed State Index and the State Capacity Index can be utilised in the cases of Sierra Leone and Haiti, as no data are available from the early 1990s. However, these indices include such factors such as coups or other illegal or unpredictable transfers of power; the breakdown of political, economic and social institutions; systematic corruption and organised crime; loss of territorial control or large-scale public unrest; or violent internal or external conflict. In the early 1990s both Sierra Leone and Haiti were experiencing several of the above indicators and, consequently, might have been considered failed states and likely candidates for intervention by the international community.

Secondly, these interventions contained elements of both coercive and non-coercive humanitarian intervention which support the thesis developed in Chapter 2 that humanitarian intervention should be considered as a continuum of actions and not as a single occurrence. Additionally, they involved a broad range of actors in the international community: the actions

in Sierra Leone involved at various times ECOWAS, United Nations, and the United Kingdom, whereas in Haiti actions were carried out by the OAS, the Caribbean community, France and the United States. In each case the modest application of military force, money and influence from a major power (United Kingdom and the United States respectively), helped turned the situations around relatively quickly.³⁹² Additionally, with this backing, the United Nations adopted a more robust peace enforcement stance, disarmed dissident forces and organised democratic elections. Nevertheless, even with this combination of actors, it required persistence over a number of years for these interventions to be relatively successful.

Thirdly, it will be shown that the interventions could be justified on both legal and moral grounds, that is, that they met the factors needed to legitimise the interventions as set out in Chapter 4. Finally, these interventions suggest strongly that, for an intervention in a fragile or failed state to be successful, it is necessary to change the internal policies of the state which requires four distinct interrelated categories of tasks. The first requirement is security, both internal and external. The second requirement is governance, that is, the creation of legitimate and effective political and administrative institutions. The third requirement is the development of a justice system which is impartial and accountable and with an effective law enforcement apparatus, and the final requirement is the development of economic and social institutions that provide the basis for a viable economy. In both these cases the first intervention was only partially successful as the interveners did not take due heed of the principles of state-building which required more than simply the election of a new government.

³⁹² James Dobbins et al., *The UN's Role in Nation Building: From Congo to Iraq* (Santa Monica: Rand Corporation, 2005), 117.

Sierra Leone³⁹³

The conflict in Sierra Leone began in 1991 when Charles Taylor³⁹⁴ sent 100 men commanded by a Sierra Leonean, Foday Sankoh, to capture Sierra Leone's diamond fields. Mr Sankoh rounded up reluctant locals to join a rebel army he called the Revolutionary United Front (RUF). At first, the Sierra Leone army (SLA) tried to defend the government but later complained that they were receiving insufficient backing, and overthrew the government. The coup leaders installed themselves as the National Provisional Ruling Council (NPRC), under the leadership of Captain Valentine Strasser, who promised that the army would defeat the RUF. However, with the support of Liberia, the RUF depopulated half the country, murdered an estimated 200,000 people, and mutilated many more thousands by hacking off their limbs.³⁹⁵ Indeed, the RUF distinguished itself through its forced conscription of adolescent boys, its sexual enslavement of girls, its shocking human mutilations, and the wholesale destruction of settlements, schools and government buildings.³⁹⁶

Unable to fight the RUF directly, the NPRC engaged private security companies, in 1995 Gurkha Security Guards Ltd, and later Executive Outcomes.³⁹⁷ At first, as a military operation, Executive Outcomes was

³⁹³ The background information was drawn in large part from: International Crisis Group Conflict History: Sierra Leone, available from <http://www.crisisgroup.org>, and BBC News timelines, available from <http://news.bbc.co.uk>.

³⁹⁴ Charles Taylor, at the time was involved in a challenge to Samuel Doe, for the presidency of Liberia. Invasion by Taylor's National Patriotic Front of Liberia (NPFL) sparked Liberia's seven-year civil war, at cost of estimated 200,000 lives and one million displaced. After his overthrow as President of Liberia he sought exile in Nigeria but has since been indicted by the Special Court for Sierra Leone on charges for war crimes and crimes against humanity. In June 2006, The UNSC agreed that that Taylor would be sent to the Hague to stand trial and any prison sentence will be served in Britain.

³⁹⁵ "A Region in Flames," *The Economist*, 3 July 2003.

³⁹⁶ Michael Chege, "Sierra Leone: The State That Came Back from the Dead," *The Washington Quarterly* 25, no. 3 (2002), 149.

³⁹⁷ William Reno, "War and the Failure of Peacekeeping in Sierra Leone," in *Stockholm International Peace Research Institute Yearbook 2001: Armaments, Disarmament, and International Security* (Oxford: Oxford University Press, 2001), 151.

remarkably successful and by the end of 1995 had established a position of military superiority, which included both the diamond fields and the capital, Freetown.



Map 7. Sierra Leone

Source: United Nations Cartographic Section

Multi-party elections were held in February/March 1996 which resulted in a new government being formed led by Ahmed Kabbah. As a result of these developments on the military and political fronts there was an attempt to

obtain a political settlement in which Executive Outcomes was to withdraw and the RUF was to turn itself into a legitimate political party. However, the RUF's commitment to the accord proved worthless and in May 1997 President Kabbah was overthrown in a coup by elements of the SLA who formed an alliance with the RUF as the Armed Forces Revolutionary Council (AFRC).

This destabilised, and then internationalised, the situation in Sierra Leone. Most West African governments refused to recognise the new government and pitted an ECOMOG³⁹⁸ contingent against the AFRC. The contingent consisted of about 10,000 troops from Nigeria and Guinea, and resulted in the restoration of President Kabbah in April 1998.³⁹⁹ This event also saw an intensification of human rights abuses, reportedly to discourage citizens from giving political or military help to the restored government. Also in 1998, the Security Council established the United Nations Observer Mission in Sierra Leone (UNOMSIL), initially for six months, to monitor the efforts to disarm combatants and restructure the nation's security forces. Unarmed UNOMSIL teams, under the protection of ECOMOG, documented reports of ongoing atrocities and human rights abuses committed against civilians.⁴⁰⁰

Despite the presence of the ECOMOG forces, violence continued and the RUF even briefly occupied Freetown in January 1999. More than 1,200 Nigerian soldiers were killed and the remainder, accompanied by what was left of the government, retreated outside of the city.⁴⁰¹ When it became clear that the Nigerian forces in ECOMOG would be withdrawn following elections in Nigeria in 1999, the Kabbah government and the RUF signed the

³⁹⁸ ECOMOG (the ECOWAS Observation and Monitoring Group) is the military component of the Economic Community of West African States (ECOWAS).

³⁹⁹ Reno, "War and the Failure of Peacekeeping in Sierra Leone." 152.

⁴⁰⁰ Ibid., 152.

⁴⁰¹ Christopher Clapham, "Sierra Leone: The Global-Local Politics of State Collapse and Attempted Reconstruction" (paper presented at the Failed States Conference, Florence, 10-14 April 2001), 11.

Lomé Peace Agreement on 7 July 1999, which mandated the disarming of all warring groups, the appointment of RUF members to Cabinet positions, and the conversion of the RUF into a political party.⁴⁰² A United Nations peacekeeping force, the United Nations Mission in Sierra Leone (UNAMSIL), was brought in to supervise the demilitarisation process that was to follow. However, the settlement only lasted until May 2000 when, on the day after ECOMOG handed over its peacekeeping duties to UNAMSIL, RUF forces seized UN troops as hostages.

It was at this time that Britain increased its bilateral assistance to the Sierra Leone government by adding around 1000 troops to the 15 military observers that they had previously assigned to UNAMSIL. Operating under British command, these troops were to rescue foreign nationals and provide support for the Sierra Leone Army. The British intervention proved to be decisive as it stemmed the RUF's advance and assisted in capturing Foday Sankoh. This British intervention also used considerably greater force against anti-government forces than UNAMSIL which resulted in tensions between them, particularly when, even by mid-December, the UN forces had not deployed into RUF-held areas, despite the ceasefire provisions.⁴⁰³

The British felt that the UN forces had not learnt from interventions in Somalia and Rwanda where insufficient force was utilised and eventually it was the small, but professional force of British troops that succeeded where a much larger, but more poorly organised, UN force was failing. The British force secured the capital, rescued UN troops captured by the rebels, took charge of the police force and instigated the training of the Sierra Leone army. This reflected the British administration's view on the means to prosecute a war in what was essentially as stateless society, and was also

⁴⁰² Reno, "War and the Failure of Peacekeeping in Sierra Leone."153.

⁴⁰³ Ibid., 159.

reflected in the comments of the British force commander who said “we will leave when the war is either won or resolved on favourable terms.”⁴⁰⁴ On the other hand, the UN is often restricted by the unwillingness of officers of foreign military contingents, or their political masters at home, to have their troops used for combat and this is often reflected in the limited mandate of UN peacekeepers.

By early 2002, UNAMSIL had disarmed and mobilised more than 75,000 ex-fighters, and the government declared the war officially ended. Kabbah was re-elected president in May 2002 and most of the British troops withdrew by the end of the year. Although the role of the British troops was crucial in the early stages of the intervention, it must be said that UNAMSIL completed most of the tasks assigned to it by the Security Council. It assisted in the voluntary return of more than a half a million refugees, helped the government restore its authority and social services in areas previously controlled by rebels, trained thousands of police personnel, and deconstructed or reconstructed dozens of police stations. It monitored and trained Sierra Leoneans in human rights and was instrumental in establishing a special court to try those responsible for war crimes. It also assisted in the setting up of a truth and reconciliation commission to assist in healing the wounds of war, by bringing together the perpetrators and victims of atrocities.

Additionally, in conjunction with other UN agencies, it launched quick impact and income generating projects to provide jobs to thousands of unemployed youths and ex-fighters and basic services to local communities. It also assisted in the reconstruction of schools, launched and funded agricultural projects, and sponsored free medical clinics in outlying areas. UNAMSIL successfully completed its mandate on December 31, 2005. It has

⁴⁰⁴ Ibid., 161.

been replaced by the United Nations Integrated Office in Sierra Leone (UNIOSIL) which was established on 1 January 2006 in accordance with Security Council resolution S/RES/1620. Its mission is to coordinate effectively with the UN system in Sierra Leone to help the country consolidate peace and assist the Government of Sierra Leone strengthen the capacity of state institutions; rule of law; human rights; and the security sector; accelerate the Millennium Development Goals; improve transparency; and build capacity to hold free and fair elections in 2007.⁴⁰⁵

By the time of ECOMOG's first intervention in 1997 there would be few reservations in nominating Sierra Leone as a failed state as the government was completely ineffectual and there was a high level of violence within the country. In reality, it could be argued that Sierra Leone was failing for a considerable period before the intervention by the RUF in 1991. Under President Siaka Stevens (1968 - 1985), Sierra Leone became a one-party state, and there was far reaching institutional decay and gross economic mismanagement. His successor, President Momoh (1985-1991), was even worse, and corruption and illegality became institutionalised as public educational and health services vanished. With no effective army, police, administration, or judicial system, Sierra Leone was in no position to resist the RUF when it was created in 1991.⁴⁰⁶

However, intervention is rarely straightforward and this was the case with the various interventions into Sierra Leone. In particular, the key to the success of the various interventions was the role played by different actors over a number of years from 1997 to 2005. Without a doubt it required the cooperation of ECOMOG, the United Nations and Britain for the

⁴⁰⁵ See United Nations Integrated Office in Sierra Leone, available from: <http://www.un.org/Depts/dpko/missions/uniosil/>

⁴⁰⁶ Chege, "Sierra Leone: The State That Came Back from the Dead." 151.

interventions to finally be successful. Success would not have been possible without UNAMSIL but it must be acknowledged that Britain played a crucial role that enabled the intervention to succeed. This differentiates this intervention from those examined in the previous chapter, in Somalia, Rwanda, and Srebrenica, where there was the absence of a major power willing to take a stand which could have averted the subsequent genocide.

Justifying the interventions into Sierra Leone is not difficult. Sierra Leone was a member country of ECOWAS. ECOMOG is deployed and operates under the directive of the heads of state of ECOWAS whose approval was obtained for the increasing involvement of its forces in Sierra Leone at every stage of the intervention. There was some concern over the role of Nigeria as the major regional power but, overall, there was no opposition to the deployment of troops under this organisation's banner. Similarly, UNAMSIL was authorised under the Chapter VI of the UN Charter and this included the British even though they operated under their own command and control system.⁴⁰⁷ Additionally, the morality of the intervention meets the six requirements established in Chapter 4. There was a just cause (there can be no argument that there was a supreme humanitarian emergency in Sierra Leone, one which was resulted in loss of life, rape and mutilation of a great number of people); the right intention (the sole purpose of the actors involved in the intervention was to stop the humanitarian emergency and return Sierra Leone to a peaceful, democratic state); the right authority (the intervention was authorised by the United Nations); and it was the last resort (without the intervention there was little prospect that the emergency would end). Additionally, the means used were proportionate to the conditions, and the prospect for success was reasonable in view of the combined action

⁴⁰⁷ See Security Council resolution 1270 (1999) of 22 October 1999, and Security Council resolution 1289 (2000) of 7 February 2000. Available from ; <http://www.un.org/Depts/dpko/missions/unamsil/mandate.html> (Accessed 13 June, 2006).

of ECOWAS, the UN and the United Kingdom. However, a major justification for the intervention into Sierra Leone was the sheer savagery of the war and a sense of common humanity that it was necessary to stop a rebel force that was terrorising an entire country, raping, looting and mutilating their victims.

The final lesson learnt from this intervention is the importance of state-building. Since 1990 a large effort has gone into retraining and rebuilding the police and National Army together with the reconstruction of a wide range of public institutions such as public utilities, telecommunications, roads, local authorities and educational and health services. With help from Britain, UNAMSIL has been recognised as a model for peacekeeping and the reconstruction of police, army and public institutions ruined by years of war. Although Sierra Leone faces many challenges and still requires years of state-building, it would appear that this intervention by the international community can be considered a likely success. This is reflected in the finalisation of United Nations Mission in Sierra Leone on 31 December 2005, and its replacement by the United Nations Integrated Office for Sierra Leone (UNIOSIL).⁴⁰⁸

Haiti⁴⁰⁹

The history of recent humanitarian interventions into Haiti can be traced back to events that occurred in 1990. In December of that year, in the first democratic elections in Haiti's history, John-Bertrand Aristide was overwhelmingly elected president. However, this was to be short-lived and,

⁴⁰⁸ See United Nations Mission in Sierra Leone. Available from:

<http://www.un.org/Depts/dpko/missions/unamsil/index.html> (Accessed 12 June, 2006).

⁴⁰⁹ The background information was drawn in large part from: International Crisis Group Conflict History: Haiti, available from <http://www.crisisgroup.org>, BBC News timelines, available from age <http://newsvote.bbc.co.uk>, and the United Nations Stabilization Mission in Haiti, Background, available from <http://www.un.org/Depts/dpko/missions/minustah/background.html>.

in September 1991, he was disposed in a military coup. The President's life was saved by the French and US ambassadors, and he was evacuated to Caracas. Aristide was urged to take advantage of the Organisation of American State's (OAS) Santiago Commitment to Democracy and the Development and the Renewal of the Inter-American System (the so-called "San Diego declaration"), which was approved in June 1991, under which it was agreed that the OAS would meet urgently to counter any threats to democracy in its member states.⁴¹⁰ On 8 October the OAS adopted a resolution urging member states to freeze the assets and impose a trade embargo on Haiti, and this was subsequently endorsed by the United Nations General Assembly, but not by the Security Council, where China and India objected on the grounds that it was deemed an internal matter of Haiti.



Map 8. Haiti

Source: United Nations Cartographic Section

⁴¹⁰ David Malone, "Haiti and the International Community: A Case Study," *Survival* 39, no. 2 (1997), 128.

The sanctions were largely ineffective so a joint OAS and UN human rights monitoring mission, known as the International Civilian Mission in Haiti (MICIVIH) was formed in February 1993 to monitor the desperate human rights situation.⁴¹¹ Largely as a result of its findings the OAS recommended strengthening the sanctions and on 16 June, the UN Security Council, in Resolution 841, imposed an arms and fuel embargo against Haiti.⁴¹² The shock of mandatory sanctions forced the Haitian government into an agreement that foresaw Aristide's return to Haiti on the 30 October. The sanctions were suspended and the United Nations Security Council approved the deployment of 700 military and 600 police personnel in the United Nations Mission in Haiti (UNMIH).⁴¹³ The first deployment of UNMIH troops, including 200 Americans and 25 Canadians, were dispatched on the *USS Harlan County*, but the vessel was re-called on arrival in Port-au-Prince Harbour after a noisy dockside demonstration.⁴¹⁴

Eventually, the deteriorating position in Haiti and the increasing pressure on the United States caused by a large number of Haitian refugees landing in Florida, forced the Security Council to authorise a two-phase operation: a sizeable UNSC-authorised, non-UN multi-national force (MNF) under Chapter VII, to be followed, when a secure and stable environment was established, by a Chapter VI UN peacekeeping operation. In the end, the MNF takeover of Haiti was peaceful as the Haitian government capitulated and left the country on the 12 October and President Aristide was reinstated to his position. The MNF handover to UNMIH took place on 31 March

⁴¹¹ Details available from: <http://www.un.org/Depts/DPKO/Missions/micivih.htm>

⁴¹² Malone, "Haiti and the International Community: A Case Study." 130.

⁴¹³ Details available from: http://www.un.org/Depts/dpko/dpko/co_mission/unmih.htm

⁴¹⁴ The demonstrators began screaming "we are going to turn this into another Somalia!" As the reactions to the killing of US forces in Somalia had been extremely negative, US felt that the lives of their military personnel could no longer be jeopardised in non-essential tasks, particularly under the UN flag. See Malone, "Haiti and the International Community: A Case Study.", 131.

1995.⁴¹⁵ This was followed by three further UN missions whose principal mandate was to provide assistance to the Haitian authorities in the professionalisation of the Haitian National Police. Throughout this period there were a number of positive developments including the restoration of some measure of democracy; a peaceful handover of power between two democratically elected Presidents; the growth of a multifaceted civil society and its involvement in the development of a political culture based on democratic values.⁴¹⁶ However, there were also setbacks owing to the continuing political crises which led to a lack of stability in the country and, as a result, serious reforms never took hold. Although Haiti received \$500 million in foreign assistance in 1995, there was little development of the institutions that could help to alleviate the extreme poverty of most of the citizens of Haiti.⁴¹⁷

In Chapter 2, humanitarian intervention was re-conceptualised to mean cross-border action by the international community (either by IGOs, NGOs or states acting unilaterally), and the action of intervention extending from non-coercive, non-military humanitarian intervention to coercive military humanitarian intervention. Several elements of this reconceptualisation can be identified in this intervention. Firstly, the action involved input from two IGOs, the OAS and UN, but it was the United States that was the key actor in this intervention and who eventually supplied the manpower for the MNF. Of particular relevance is the fact that this was the first time that the United States had sought UN authorisation for an intervention in the Western Hemisphere, and this reduced the regional states' opposition to the intervention.⁴¹⁸ This was particularly significant as many OAS members had unpleasant memories of a previous US intervention into the Dominican

⁴¹⁵ Ibid., 133.

⁴¹⁶ Ibid., 134

⁴¹⁷ Ibid.

⁴¹⁸ Ibid., 136.

Republic. Secondly, several elements of the continuum discussed above were involved in this intervention. In the first instance the use of economic sanctions represented a non-coercive, non-military humanitarian intervention: when this proved unsuccessful there was a threat of a coercive military humanitarian intervention, but in the end as a result of this threat all that was required was a non-coercive military human intervention (that is, Chapter VI peacekeeping).

Where the interventions had reduced effectiveness was in their lack of state-building after the intervention. Although there were continuing UN missions to improve security through the development of the police force, there was little attention given to the other requirements of state-building, that is: the creation of legitimate and effective political and administrative institutions; the development of an independent and effective justice system; and the development of economic and social institutions that provide the basis for a viable economy and the provision of essential services to the population in areas such as health and education. This is reflected in the fact that in 1995, the first full year after Aristide's return, Haiti received \$730 million from all international donors. However, within two years total international aid had slumped under \$182 million annually which undermined the ability of the government to improve the life of the poor by providing healthcare education and jobs.⁴¹⁹

In the Year 2000 presidential and parliamentary elections, President Aristide and his Fanmi Lavalas party claimed victory on a turnout that hardly rose above 10% of voters and was boycotted by the main opposition parties. The result was contested by both the opposition and members of the international community, and dialogue between the government and the opposition broke down. By late 2003, a united opposition movement, comprising political

⁴¹⁹ Michele Wucker, "Haiti: So Many Missteps," *World Policy Journal*, no. Spring (2004)., 42.

parties, civil society actors as well as the private sector, was calling for the President's resignation. The Caribbean Community offered to mediate and on 31 January 2004, submitted the Prior Action Plan⁴²⁰, which called for major reforms, including a new Cabinet, while allowing President Aristide to serve out his term.⁴²¹ However, the opposition failed to back the plan and, in February 2004, armed conflict broke out in the city Gonaives, and gradually the fighting spread to other cities and the insurgents took control of much of the northern part of the country. Faced with the threat of large-scale clashes, and the decline of international support, President Aristide left the country on 29 February on a US-arranged flight.

On 29 February, the Permanent Representative of Haiti to the United Nations submitted the interim president's request for assistance which included the authorisation for international troops to enter Haiti. As a result of this request the Security Council authorised a Multinational Interim Force (MIF) and indicated its readiness to establish a follow-on United Nations stabilisation force to support the continuation of a peaceful and constitutional political process and the maintenance of a secure stable environment. The MIF, made up of United States and French troops, immediately started its deployment to Haiti as authorised by that resolution.

A thirteen-member transitional government was formed in March and, in order to build a broad political consensus for the work of the transitional government, a political pact, the Consensus on the Political Transition Pact, was adopted. The general understanding of the political transition was that it would see the holding of municipal, parliamentary and presidential elections in 2005. The Pact also set out measures to be undertaken during the

⁴²⁰ This was developed by the group of six, including the Bahamas for CARICOM, Canada, the European Union, France, the Organisation of American States and the United States.

⁴²¹ See United Nations Stabilization Mission in Haiti, Background, available from: <http://www.un.org/Depts/dpko/missions/minustah/background.html>

transitional period in the areas of security, development, the fight against corruption, decentralisation, elections, judicial reform, a new social contract, the institutional strengthening of political parties and civil society organisations, and the reintegration of former armed elements and professionalisation of the Haitian National police.⁴²² The MIF was replaced by the United Nations Stabilisation Mission in Haiti (MINUSTAH) in June.

MINUSTAH's mandate has been renewed several times and now expires on 15 August 2006, although it is anticipated that this will be extended for a further period. It was recognised early that a political process was not credible without longer term development and job creation for a population that had been living in severe poverty for such a long time, and at the international donors conference on Haiti, held in Washington, D. C., on 19 and 20 July 2004 overwhelming support was received from international donors to assist.⁴²³

By June 2006 presidential and parliamentary elections had been held and Haiti began to resemble a real democracy. Unlike President Préval's previous presidency from 1996 to 2001, where the parliament refused to accept his nominee for Prime Minister, forcing him to rule by decree, this time he had Jacques-Edouard Alexis accepted by a parliament in a new national mood of reconciliation.⁴²⁴ Additionally, he has appointed a broad-based cabinet with representatives from six different parties.

Despite this, it is likely to be a long time before Haiti will be able to stand on its own. President Préval has requested the UN to further extend its 9,000 strong peace-keeping mission which should not be a problem as the South

⁴²² Ibid.

⁴²³ United Nations Stabilization Mission in Haiti – Background. Available from: <http://www.un.org/Depts/dpko/missions/minustah/background.html> (Accessed 12 June, 2006).

⁴²⁴ "An Uphill Struggle," *The Economist*, 24 June 2006.

American suppliers of troops, Brazil, Argentina and Chile, are committed to the mission. In the interim, a new civilian police force is being trained but it is expected to take three years to reach its minimum requirement of 20,000.⁴²⁵ A fresh UN mandate focusing on social, economic and political reform is being discussed, and this, together with new international funding for at least another twelve months is likely to be approved in the near future. Despite these improved prospects the situation remains serious. Haiti is poorer in real terms today than it was in 1955 and, with an annual income per capita of just US\$390, two thirds of its population live below the poverty line.⁴²⁶ Life expectancy is 52 years and dropping.⁴²⁷ Despite these statistics, the interventions into Haiti by the international community must be seen in a positive light. Haiti prospects are better than they have been since the original election of Aristide in 1990.

The second intervention into Haiti, as in the previous intervention, involved various members of the international community acting in concert. However, this intervention was different to the first and could be categorised as a non-coercive military humanitarian intervention (in accordance with the re-conceptualisation of humanitarian intervention put forward in Chapter 2) as the request for intervention was made by the interim government in Haiti. The continued cooperation between the new Haitian government, the UN mission, IGOs and private donors reinforces the non-coercive nature of this intervention and reinforces the proposition in Chapter 2 that interventions are more successful when a range of actors are involved.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid.

Conclusion

Sierra Leone and Haiti,, at the beginning of the 1990s, were deeply conflicted states that provided few political goods and services to their citizens and were subject to violent internal conflict. While the indices developed in Chapter 1 do not cover this period, there is little doubt that both these states, at the time, would have been considered as failed states and, as such, contenders for intervention by the international community. However, the experience of the intervention into Somalia, made much of the international community hesitant about intervening to try to correct the situation, but as the conditions in Sierra Leone and Haiti worsened, the international community was forced to confront (in both regional organisations and the United Nations) the deteriorating situation in each country and eventually intervention became unavoidable. The interventions into Sierra Leone occurred between 1997 and 2006 and, in Haiti, began in 1994 and are still ongoing.

These interventions support the argument developed in Chapter 2 where humanitarian intervention was reconceptualised to mean the cross-border action by the international community in response to human suffering. The choice of actions occur on a continuum from non-coercive, non-military humanitarian intervention to coercive military humanitarian intervention. Both these interventions involved multiple actions along this continuum with actions varying from non-coercive peacekeeping operations to outright military action.

It was further theorised in Chapter 2 that a range of actors may be involved in interventions into fragile or failing states. Although it is preferable that all actions be authorised by the United Nations Security Council, in practice, there is often a distinction between those who decide and those who intervene. All the interventions in these cases, except for the original

intervention in Sierra Leone by ECOMOG, were approved by the Security Council but there were a number of other actors also involved. In addition to the United Nations' missions, there was participation by other regional organisations and most crucially, major hegemonic powers (in particular United States and United Kingdom) who in both cases, at critical times, proved the difference between success and failure. Although in both these circumstances the major hegemonic actors were authorised by the UN, it was their separate command structures that enabled them to take the decisive action required.

In neither of these cases was there any doubt that there was both legal and moral justifications for the interventions. Except for the first intervention into Sierra Leone, all were authorised by the United Nations under either Chapter VI or Chapter VII of the UN Charter. The original intervention into Sierra Leone was authorised by ECOWAS under its Charter which was agreed to by all the member countries including Sierra Leone. Morally, the interventions were certainly justifiable under the Just War criteria and, in the case of Sierra Leone, in particular, the sheer savagery of the war that resulted in the mutilation of many tens of thousands of innocent people was a breach of common humanity that certainly required intervention by the international community.

Finally, a key element to the success to date of these interventions was the integration of state-building into the United Nations' missions. In each case it was recognised, that although the first requirement was to establish security, it was also necessary to assist in the rebuilding of governance, the development of an independent justice system, and the establishment of economic and social institutions that could provide the basis for a viable economy, and the provision of essential services to the population in areas such as health and education. Although a start has been made on these

elements of state-building ongoing state-building assistance will be required over a considerable period of time to ensure that both states avoid returning to the status of a failed state.

Kosovo: Illegal, but Legitimate

The significance of NATO's intervention into Kosovo in March 1999 was that it was the first time since the founding of the UN that the use of force had been justified on humanitarian grounds and employed without authorisation from the UN Security Council. The dilemma that arises from this, as examined in Chapter 4, is that Article 2(4) of the UN Charter states that "all members of the UN shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". Additionally, the prohibition on intervention embodied in Article 2(4) cannot be contracted out at the regional level and the prohibition of the use of armed force is binding on states both individually and as members of international organisations such as NATO.⁴²⁸ It is within this framework that the issue of legality versus the legitimacy of the intervention into Kosovo must be considered.

In Chapter 4 it was argued that since the end of the Cold War, ethical and moral concerns had become more central to a state's foreign policy and that a range of alternative actions had developed that reflected a hierarchy of values in the international community. It was proposed that a modified form of the Just War tradition, as set out by the ICISS, could be used to justify humanitarian interventions. However, one of the requirements of this tradition is the right authority which the international community accepts as the authorisation by the United Nations Security Council.⁴²⁹ In the case of

⁴²⁸ Bruno Simma, *NATO, the UN, and the Use of Force: Legal Aspects* (1999 [cited 1 10]); available from <http://www.ejil.org/journal/Vol10/No1/ab1.html>, 3.

⁴²⁹ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*, 45-53.

Kosovo no such authorisation was present, therefore, the ICISS criteria could not apply.

Nevertheless, this thesis has argued throughout that, based on a conception of forceful liberalism, humanitarian intervention is morally justified in certain cases as it is a responsibility of states and governments to protect and secure human rights, and that governments that seriously violate those rights undermine the justification of their political power, and cannot regard their sovereignty as sacrosanct. It was argued in Chapter 5 that interventions could be legitimate in the absence of appropriate legal authority when they met four criteria, namely just cause (a supreme humanitarian emergency), last resort, a proportional use of force, and a high probability of obtaining a positive humanitarian outcome. This chapter will argue that the intervention in Kosovo met these requirements and therefore should be considered legitimate even if it was formally unlawful.

Origins of the Conflict

The history of the conflict in Kosovo can be traced back to the defeat of the Serbian Prince Lazar by the Ottoman Turks in 1389. The province remained under Ottoman rule until Serbia and other independent states united to force them out in 1912. Following World War I and the formation of the Kingdom of Serbs, Croats and Slovenes, Kosovo was returned to Serbia. After World War II the kingdom was reconstituted as the Peoples' Federal Republic of Yugoslavia which consisted of six republics (Serbia, Montenegro, Croatia, Slovenia, Bosnia and Herzegovina, and Macedonia) and two autonomous regions within Serbia (Vojvodina and Kosovo). Kosovo was subsequently

granted full autonomy in 1974 which gave it a status approaching that of a constituent republic.⁴³⁰

Yugoslavia's collapse followed the end of the Cold War. Tensions between the republics had been rising since Josip Tito's death in 1980 and came to a head when Slovenia and Croatia strongly expressed demands for looser ties within the Federation and eventually became the first republics to declare their independence from Yugoslavia. By 1992 Yugoslavia had split into five separate independent republics with Serbia and Montenegro forming the Former Republic of Yugoslavia (FRY).

President Slobodan Milosevic's decision, in 1989, to remove Kosovo's autonomy was based on Serbian fears of ethnic domination by the Albanians invoked by the memory of the Serb's defeat at the hands of the Turks six centuries earlier. As a result of this action, ethnic Albanian politicians declared their independence in July 1990 and established parallel institutions that Serbia refuse to recognise.⁴³¹ Predominant among these organisations was the League for a Democratic Kosovo (LDK) whose main goal was independence for Kosovo. In the mid-1990s the situation deteriorated and many Kosovar Albanians lost patience with the strategy of passive resistance and were exhausted by endeavouring to sustain a parallel system under difficult circumstances.⁴³² There was a brief period of hope in 1996 but several tentative agreements were never implemented, and it was during this period that the Kosovo Liberation Army (KLA) first made an appearance. With the rise of the KLA, police harassment increased as the FRY

⁴³⁰ Simon Chesterman, *Just War Or Just Peace: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 207.

⁴³¹ Ibid.

⁴³² Nicholas Wheeler, "Humanitarian Intervention after Kosovo: An Emergent Norm, Moral Duty or the Coming of Anarchy?," *International affairs* 77, no. 1 (2001).. Available from <http://www.reliefweb.int/library/documents/thekosovoreport.htm>. (Accessed 23 Marh, 2004).

government proclaimed the KLA a terrorist organisation, thereby justifying searches, detentions and political trials.⁴³³

Internal Armed Conflict January 1998 - March 1999

At the beginning of January 1998, FRY⁴³⁴ special forces commenced exercises in several regions aimed at intimidating the Kosovar Albanian population and, in addition, armed Serb civilians and paramilitary groups entered Kosovo from Serbia. On 27 February 1998, heavily armed FRY forces attacked the village of Likoshan/Likosane using helicopter gun-ships and armoured units. Four Serbians and an unknown number of Albanians were killed and the fighting continued for several days.⁴³⁵

It was at this stage that the international community first involved itself and, on 31 March 1998, the UN Security Council, acting under Chapter VII, adopted Resolution 1160 in which it condemned the use of excessive force by the Serbian police and terrorist action by the KLA, imposed an arms embargo, and expressed support for a solution based on the territorial integrity of the FRY with a greater degree of freedom for the Kosovar Albanians.⁴³⁶ The resolution had little effect, and facing a rapidly increasing KLA presence, the FRY army entered Kosovo with massive reinforcements and started a large-scale operation, with increasing attacks on civilians reported against both parties involved in the widening conflict. Indeed, the KLA abuses far outstripped the rise in abuses perpetuated by the FRY security and paramilitary forces.⁴³⁷

⁴³³ Ibid.

⁴³⁴ This dissertation refers to the Former Republic of Yugoslavia for the purposes of consistency but, in effect, the actions only involved Serbia and all the decisions were made by Slobodan Milosevic, a Serbian.

⁴³⁵ Ibid.

⁴³⁶ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 208.

⁴³⁷ Wheeler, "Humanitarian Intervention after Kosovo: An Emergent Norm, Moral Duty or the Coming of Anarchy?."



Map 9. Southwestern Yugoslavia (Kosovo) Source: United Nations Cartographic Section

These increases in military activity and violence against civilians led to the first public consideration by the NATO alliance of the need for military intervention, but the UN Secretary General warned that any intervention would require a Security Council mandate, and it was apparent that the Russian federation would not agree to such a step.⁴³⁸ Fighting continued throughout the summer and FRY excursions into Albanian territory and airspace were commonplace.⁴³⁹ The KLA excursions into Kosovo were also frequent and FRY forces responded with a variety of tactics including the use of landmines and ambushes. While exact details are not available, it is estimated that by the beginning of August 1998, 200,000 to 300,000 Kosovar Albanians had been displaced from their homes as a result of the sustained Yugoslav attacks.⁴⁴⁰

⁴³⁸ Simma, *NATO, the UN, and the Use of Force: Legal Aspects* ([cited]).

⁴³⁹ *Ibid.* ([cited]).

⁴⁴⁰ Wheeler, "Humanitarian Intervention after Kosovo: An Emergent Norm, Moral Duty or the Coming of Anarchy?."

On 23 September 1998, the UN Security Council adopted Resolution 1199 which determined that the deterioration of the situation in Kosovo constituted “a threat to peace and security in the region” and demanded a ceasefire and action to improve the humanitarian situation.⁴⁴¹ However, it was clear that Russia would veto any council resolution containing a mandate or authorisation for the use of force against the FRY, but subsequent reports of two massacres by FRY forces of about 30 Kosovar Albanians influenced NATO's decision to act. Its members authorised the organisation to go ahead with military action if the FRY did not comply with the council resolutions. The Secretary-General of NATO concluded on 9 October 1998, that “the allies believe that in the particular circumstances with respect to the present crisis in Kosovo as described in UN Resolution 1199, there are legitimate grounds for the Alliance to threaten, and if necessary, to use force”.⁴⁴²

This threat led to a period of intense negotiations between US special envoy Richard Holbrooke, representing the Contact Group⁴⁴³, and FRY President Slobodan Milosevic who reached an agreement based on the demands in Resolution 1199. In this agreement, which was submitted to the UN Security Council for approval, Milosevic agreed to pull back security forces, allow access to aid groups, and accept the Organisation for Security and Co-operation in Europe - Kosovo Verification Mission (OSCE-KVM). The monitoring effort was to be complemented by NATO over-flights. These

⁴⁴¹ SC res. 1199 of 23 September 1998 quoted in Chesterman, *Just War Or Just Peace: Humanitarian Intervention and International Law.*, 208.

⁴⁴² Secretary-General Solana quoted in Simma, *NATO, the UN, and the Use of Force: Legal Aspects* ([cited].), 7.

⁴⁴³ The contact group consisted of the US, Russia, France, Britain and Italy. It was an intergovernmental group, initially set up at the time of the Bosnian crisis, with the remit of resolving the issues in the Balkans.

agreements were endorsed by the Security Council in Resolution 1203 on 24 October, 1998.⁴⁴⁴

Although Serbia initially implemented the agreement and withdrew, the KLA took advantage of the new situation and renewed military action by moving to take up positions vacated by the FRY. It was clear by early December that both FRY and the KLA had failed to comply fully with the requirements set out in SCR 1160, 1199 and 1203. In the first 11 days of January 1999, 21 people died as a result of clashes between the KLA and FRY forces, and the FRY army moved into Kosovo in large numbers. Investigating the site of a massacre on the 16 January 1999, a team from OSCE-KVM found evidence of arbitrary detentions, extra judicial killings, and mutilation of unarmed civilians.⁴⁴⁵ Following calls for dialogue, the Contact Group members organised peace negotiations to be held in Rambouillet, France, in early February between FRY and Kosovar Albanian leaders but the peace negotiations failed. While these negotiations were proceeding it was estimated that from 150,000 to 200,000 new refugees were driven from their homes in Kosovo. In order to avoid a humanitarian catastrophe NATO decided to intervene and on 24 March, at 8 p.m. local time, NATO aircraft started the bombing campaign against FRY.

Operation Allied Force, March 1999 - June 1999

NATO's assumption was that a relatively short bombing campaign against Serbia would persuade Milosevic to return to negotiations and sign the Rambouillet agreement. However this was to be a gross underestimation of the FRY President. At the start of the NATO bombing campaign the FRY forces had 40,000 combat troops, a unified police and paramilitary task force,

⁴⁴⁴ Wheeler, "Humanitarian Intervention after Kosovo: An Emergent Norm, Moral Duty or the Coming of Anarchy?." and Chesterman, *Just War Or Just Peace: Humanitarian Intervention and International Law.*, 209.

⁴⁴⁵ The Kosovo Report

300 tanks, and anti-aircraft and ground artillery units available in Kosovo or at its borders. By contrast, the KLA was not a centrally organised military force and consisted of 8,000 to 10,000 lightly armed, poorly trained men in Kosovo, with an additional 5,000 to 8,000 men training in northern Albania.⁴⁴⁶

The FRY forces launched a vicious campaign against the Kosovar Albanian population intended to drive most, if not all, Kosovo Albanians from Kosovo and to additionally destroy the basis of their society so as to prevent them returning in the future. This is frequently described as "ethnic cleansing". The result was that during the course of the NATO air campaign, approximately 860,000 civilians were forced into refuge outside Kosovo. An additional 590,000 were internally displaced. Together this means that over 90% of the Kosovar Albanian population were displaced from their homes during the NATO air campaign which was conducted between 24 March 1999 and 10 June 1999.⁴⁴⁷ When the bombing campaign failed to bring Milosevic back to negotiations, NATO member states began to question how they were going to end the war.

In April, the German government promoted a diplomatic initiative whereby the UN would be bought into the process and have some role in the administration of Kosovo. It was also realised that Russia was a key factor and that they would need to be involved in any settlement so as to avoid the veto in the UNSC. In early June, EU and Russian envoys bought a proposal to Milosevic that called for an immediate and verifiable end to the repression and violence in Kosovo; the withdrawal of FRY military, police and paramilitary forces; the deployment of effective international civil and security presences; and the return of all refugees. No timeline or mechanism for resolving Kosovo's long-term status was included in the agreement. On 3 June the plan was approved by the FRY parliament and NATO suspended

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid.

air attacks on 10 June 1999. On the same day the UN Security Council passed Resolution 1244 which established the framework for the UN civil administration of the province and the establishment of an international security presence, but did not provide for any post-facto legality to the NATO intervention.⁴⁴⁸ The question that arises from the NATO intervention is, can it be justified both legally and morally?

Legal Aspects of NATO's Intervention in Kosovo

As noted in the introduction, this was the first time since the founding of the UN that justification for an intervention was claimed on humanitarian grounds, where the use of force had been employed without authorisation from the UN Security Council. Chapter 4 examined the legal and moral justifications for humanitarian intervention and also took into account the question of legitimacy, that is, whether an intervention could be considered legitimate even if it was unlawful. This section investigates how this intervention relates to the legal issues raised in that chapter.

The key question is whether NATO's action in Kosovo was legal under the United Nations Charter. Article 2 (4) of the UN Charter prohibits the use or threat of armed force against another state except in self-defence or in execution of collected measures authorised by the council or the assembly. In view of the circumstances, there is little doubt that NATO's action in Kosovo violated the UN Charter. Chapter 4 raised the point that some supporters of humanitarian intervention claim that intervention is, in fact, permitted under

⁴⁴⁸ See UNSC Resolution 1244, 10 June 1999. Available from: <http://www.nato.int/kosovo/docu/u990610a.htm> (Accessed; 23 September, 2005).

this Article 2(4) as, rather than imposing a general prohibition, it is actually three specific prohibitions.⁴⁴⁹

Under these interpretations it is claimed that, firstly, humanitarian intervention is permitted under the Charter if it does not constitute the use of force against territorial integrity; that is, 'territorial integrity' is subject to a narrow definition and a state only violates the territory of another state if it actually take possession of part of the second state's territory.⁴⁵⁰ Secondly, the term political independence is contested particularly when the intervention is carried out in the context of a pro-democratic intervention. In these cases, supporters of humanitarian intervention would argue that the restoration or installation of democracy increases the political independence of a state.⁴⁵¹ Finally, Article I of the Charter lists the purposes of the United Nations, and the first-listed purpose is to "maintain international peace and security." Article 1(3) also cites the promotion of human rights as a purpose of the UN. Therefore, intervention for humanitarian purposes would not seem to be a breach of the Charter if Article 2(4) is interpreted in this manner.⁴⁵² On the other hand, opponents of the above liberal interpretation of Article 2(4) claim that, on the basis of both a teleological and historical interpretation, the prohibition enacted in the article is intended to be of a comprehensive nature.⁴⁵³ In this case the phrase "...or in any other manner inconsistent..." is not designed not to allow exceptions, but rather to make the prohibition unassailable.

⁴⁴⁹ Mark S Stein, "Unauthorized Humanitarian Intervention," *Social Philosophy & Policy* 21, no. 1 (2004).

⁴⁵⁰ Ibid.

⁴⁵¹ W. Michael Reisman, "Haiti and the Validity of International Action," *American Journal of International Law* 89, no. 1 (1995), 83.

⁴⁵² Stein, "Unauthorized Humanitarian Intervention." 19.

⁴⁵³ Simma, *NATO, the UN, and the Use of Force: Legal Aspects* ([cited]). (Accessed 31 March, 2005).

However, the General Assembly has always construed the Charter as imposing a rule of *per se* invalidity with respect to intervention, that is, the rule admits no exception: intervention is always unlawful regardless of the identity of the state undertaking the intervention, and regardless of motives or effects.⁴⁵⁴ Therefore, unless the Security Council determines that violations of human rights occurring within a state constitute a threat to peace and authorises an enforcement action, any other intervention in the absence of such authorisation would constitute a breach of article 2(4) of the Charter.⁴⁵⁵ This did not occur in the case of NATO's intervention into Kosovo and, therefore, this intervention was a breach of the UN Charter and would be considered illegal under standard interpretations international law.

Nevertheless, it needs to be considered whether the NATO intervention established a legal base for future unilateral action in support of human rights. Two questions arise: first, does this intervention establish a legal precedent to safeguard international human rights law, and second, does the Kosovo intervention represent an aspiration for NATO to establish legality to act unilaterally to protect human rights on a regional basis without UN authority?⁴⁵⁶

As has been discussed, there has been little defence of the NATO action in Kosovo as legal in terms of the existing international law. What is important to determine is whether this action represented a legal precedent relating to humanitarian interventions in the future. Bearing in mind the analysis of customary law in Chapter 4, it is unlikely that this intervention will alter existing international law to two reasons. First, customary law is unlikely to change because the International Court of Justice has determined that for

⁴⁵⁴ Michael Glennon, *Limits of Law, Prerogatives of Power: Interventionism after Kosovo* (New York: Palgrave, 2001), 21.

⁴⁵⁵ Simma, *NATO, the UN, and the Use of Force: Legal Aspects* ([cited]. 5.

⁴⁵⁶ Hugh Walker, "The Case of Kosovo," *Civil Wars* 7, no. 1 (2005), 42.

opinio juris ⁴⁵⁷ to qualify, state practice must be predicated on an alternative rule of law.⁴⁵⁸ In this case the NATO allies did not justify their action by referring to an established rule of law and offered no legal justification for it. Additionally, it is difficult to utilise the intervention as an emergent customary law as several major states, in particular Russia, contested the legality of the intervention.⁴⁵⁹ Second, Article 2 (4) of the UN Charter is considered a *jus cogens* norm. Therefore, to overcome the difficulties surrounding the formulation and use of customary law, the only permanent alternative would be to amend the United Nations Charter on the basis of a norm of equal status.⁴⁶⁰

As to whether there is an aspiration for NATO to establish a basis for unilateral action outside the United Nations, this seems unlikely, as NATO has no greater freedom in international law than its member states. Although Chapter VIII of the Charter (regional arrangements) provides a provision whereby the "Security Council shall, where appropriate, utilise such regional arrangements or agencies for enforcement action under its authority". It also goes on to say that "no enforcement action shall be undertaken under regional arrangements or by regional or agencies without the authorisation of the Security Council".⁴⁶¹ Therefore, there is no legal justification for NATO to act outside the jurisdiction of the United Nations except under Article 51 of the Charter for the direct self-defence of its members.

⁴⁵⁷ See Chapter 4, Page 9

⁴⁵⁸ Walker, "The Case of Kosovo.", 43

⁴⁵⁹ Wheeler, "Humanitarian Intervention after Kosovo: An Emergent Norm, Moral Duty or the Coming of Anarchy?" 118.

⁴⁶⁰ Walker, "The Case of Kosovo." 43.

⁴⁶¹ Simma, *NATO, the UN, and the Use of Force: Legal Aspects* ([cited]., 4.

Illegal but Legitimate

The NATO intervention into Kosovo raised important questions relating to the reconciliation of the commitment to international protection of human rights with respect for national sovereignty and the legal restrictions on the non-defensive use of force. The Independent International Commission on Kosovo (IICK) was established to investigate these issues and to analyse a number of questions that arose out of the intervention. These included the following: Why was the international community unable to act earlier and prevent escalation of the conflict? Why did diplomacy fail? Did NATO act rightfully in launching a military campaign without Security Council approval? Could agreement only be secured by resorting to armed intervention?⁴⁶²

The IICK took the view that the pattern of FRY aggression in Kosovo, the experience of ethnic cleansing previously in Bosnia, and the lack of an international response to genocide in Rwanda in 1994, combined to create a strong moral and political duty on the part of the international community to act effectively to prevent grave breaches of humanitarian rights. Additionally, the commission considered that this duty also pertained to both the protection of the Kosovar Albanians and to the re-establishment of autonomy for Kosovo including the realisation of the right of self-determination for the people of Kosovo. The IICK came to the conclusion that diplomacy had failed to produce these results in a reliable manner leaving only the option of doing nothing or mounting a military intervention under NATO's auspices. Taking all into consideration the commission supported a general conclusion that the NATO campaign was the illegal, yet legitimate.⁴⁶³ This conclusion was “ related to the controversial idea that a “right” of humanitarian intervention is not consistent with the UN charter if

⁴⁶² "The Kosovo Report," (Independent International Commission on Kosovo, 2001).

⁴⁶³ Ibid.

conceived as a legal text, but that it may, depending on context, nevertheless, reflect the spirit of the charter as it relates to the overall protection of people against gross human abuse".⁴⁶⁴

Two versions of the Just War tradition⁴⁶⁵ have been proposed as methods of justifying humanitarian intervention in the 21st century. Both require that any decision to go to war requires that they be made by the right authority. As discussed in Chapter 4, it is the intention of the ICISS criteria that this right authority is the United Nations. Obviously, NATO's intervention did not meet this requirement but can the question of right authority been seen in an alternative way? Under the classical Just War tradition it is possible to argue that, as NATO represented the majority of states in Europe and that, as the intervention took place within Europe, that this could count as a right authority, particularly as the agreement of all NATO members was required on all major decisions of the intervention.

Whilst it is accepted that there was no legal authorisation by the Security Council, to what extent can other actions by the council be considered as the "right authority"? There are three possibilities. Firstly, the prior resolutions of the Security Council. It has been claimed by some US and NATO officials that Resolution 1116 (March 1998), Resolution 1199 (September 1998) and Resolution 1203 (October 1998) provided sufficient legal authority for NATO to use force against Yugoslavia.⁴⁶⁶ Did these resolutions authorise the use of force? In contrast to previous resolutions such as Korea, the 1991 Gulf War, or Bosnia and resolutions which clearly authorise the use of force, these resolutions are less emphatic. Resolution 1160 places an embargo against the shipment of the implements of war but does not authorise the use of force to enforce the embargo. Resolution 1199 only authorised the monitoring of the

⁴⁶⁴ Ibid.

⁴⁶⁵ The traditional Christian Just War tradition and the modified ICISS version.

⁴⁶⁶ Glennon, *Limits of Law, Prerogatives of Power: Interventionism after Kosovo.*, 31.

situation and, while Resolution 1203 "demands" compliance with certain agreements, there is no suggestion that, if the demand is not met, the use of force is authorised.⁴⁶⁷ Therefore, there is little in the language of these resolutions that provides support for the contention that the council authorised NATO to use force against Yugoslavia.

Secondly, was there implied authorisation? There are two possibilities. It might be argued that the Council's refusal to disapprove NATO's action constituted implicit approval. The Council had the opportunity to do this when Russia proposed a condemnation of NATO's action but, in a vote on 26 March 1999, the proposal was defeated twelve to three. According to Michael Glennon "the problem with such an inference is that it mistakenly assumes either a positive or negative intent, whereas in fact the intent may have been to remain neutral".⁴⁶⁸

Finally was there a subsequent ratification? It has been argued that Resolution 1244, adopted by the Security Council on 10 June 1999, had the effect of legally endorsing NATO's action. However, that resolution does not indicate Security Council approval of NATO's action as it simply deals with the situation as the council found it. Indeed, it is likely, but not necessarily definite, that if the resolution had the effect of granting a retroactive endorsement of the act it would have been vetoed by Russia or China.⁴⁶⁹

The question of right authority, therefore, remains fuzzy as it has different connotations when it is considered as part of a moral justification rather than as part of a legal justification. If the question of right authority clouds justification under both the classical and ICISS Just War traditions, was the intervention legitimate under the criteria established in Chapter 5 based on

⁴⁶⁷ Ibid. 32.

⁴⁶⁸ Ibid. 32.

⁴⁶⁹ Ibid. 33.

Wheeler's Solidarist Theory of Legitimate Humanitarian Intervention? In that chapter it was argued that humanitarian intervention could be legitimate even if technically unlawful, if it met the criteria of just cause, last resort, proportionality and a positive humanitarian outcome. Each is now examined to determine whether the NATO intervention into Kosovo can be considered legitimate under the those criteria.

The first issue to consider is whether there was a just cause, that is, a supreme humanitarian emergency when the only hope of saving lives depended on outsiders coming to the rescue.⁴⁷⁰ To meet this criterion, NATO argued that the growing numbers of refugees prior to the intervention represented a humanitarian emergency and that there were indications of a planned ethnic cleansing.⁴⁷¹ Additionally, previous events in Kosovo, coupled with Milosevic's previous record in Bosnia, suggest strongly that inaction would be the more dangerous course. It has been argued that the refugee flows were higher in October 1998 than in March 1999 when NATO decided to act, but it is still clear that 150,000 to 200,000 Kosovar Albanians were driven from their homes in the two months prior to the intervention, which clearly indicates a humanitarian emergency did exist. Further, when the OSCE-KVM investigated the incident when Yugoslav forces killed 45 ethnic Albanians in Racak in January, it did reveal evidence of arbitrary detentions, extra-judicial killings and mutilation of un-armed civilians. Therefore, it is correct to acknowledge that just cause existed for the NATO intervention into Kosovo.

In any humanitarian intervention the issue of last resort is always difficult to gauge. It is it is necessary to reconcile the moral imperative highlighted by the just cause with the requirement that force be the last resort. The problem

⁴⁷⁰ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 34.

⁴⁷¹ Walker, "The Case of Kosovo." 35.

arises when a delay may result in the death or displacement of many hundreds of thousands of people. In Kosovo, NATO originally raised the threat of the use of force in September 1998 but persisted with diplomatic moves until the armed intervention on the 24 March 1999. Prior to this there had been extensive diplomatic endeavours to arrive at a peaceful solution, in particular, the Holbrooke Agreement, between US special envoy Richard Holbrooke and President Milosevic in October 1998.⁴⁷² However, by the time of the intervention it is realistic to argue that the likelihood of any further diplomatic success was greatly reduced and that force was the last resort.

The principle of proportionality requires that the gravity and extent of the violations of the intervention be on a level commensurate with the reasonable calculable loss of life, destruction of property and expenditure of resources.⁴⁷³ One method of reconciling whether the use of force was appropriate or excessive in the case of Kosovo is to use a modified version of *double effect* to resolve the issue.⁴⁷⁴ In this there must be a commitment to a *double intention*; first that good be achieved and second that evil will be reduced as far as possible. Therefore, this would be reflected in the rule that:

The intention of the actor is good, that is, he aims narrowly at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimise it, accepting costs to himself.⁴⁷⁵

In Kosovo, the judgment on proportionality must be made on the basis of the NATO air campaign. It relates directly to the legitimacy of the target and the degree to which collateral damage and civilian casualties were minimised. NATO claimed that over 99% of munitions hit their target and the Independent International Commission on Kosovo was largely in agreement

⁴⁷² Ibid. 39.

⁴⁷³ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 35.

⁴⁷⁴ Walker, "The Case of Kosovo." 46.

⁴⁷⁵ Ibid.

with this assessment and further noted, that there was no evidence to suggest the deliberate targeting of civilians. Consequently, it can be concluded that overall NATO's record was unprecedented in the extent that it avoided civilian damage through the accuracy of its targeting.⁴⁷⁶

The final criterion needed to determine the legitimacy of the NATO intervention is whether there was a positive humanitarian outcome. This is characterised by whether the intervention has rescued the victims from oppression, and that human rights have subsequently been protected.⁴⁷⁷ Two elements are involved. Firstly, did the NATO bombing succeed in its aim of forcing the removal of the FRY forces from Kosovo. In this respect it cannot be regarded as an immediate unqualified success but it did ultimately prevail in its mission. The second element was more successful. The Independent International Commission for Kosovo report indicates that, of the 850,000 displaced persons who had left Kosovo during the conflict, over 800,000 had returned by November 1999.⁴⁷⁸ Further the alliance achieved its objective by ensuring that there was a UN peacekeeping force deployed in Kosovo on an ongoing basis. Therefore, although the situation in Kosovo is ongoing and a final solution is yet to be achieved, it is possible to say that the NATO intervention did achieve a positive humanitarian outcome.

On the basis of the above analysis it is concluded that the intervention into Kosovo by NATO met the four criteria outlined in Chapter 4 utilised to establish a framework for legitimate, if unlawful, interventions. As detailed in that chapter, the aim of this conception is to avoid relying on a range of criteria that set too high requirements for intervention that are rarely, if ever met, and, therefore, to enable members of the international community to meet the emerging norm of "the responsibility to protect".

⁴⁷⁶ Ibid. 47.

⁴⁷⁷ Wheeler, *Saving Strangers: Humanitarian Intervention in International Society.*, 37.

⁴⁷⁸ Walker, "The Case of Kosovo." 53.

Conclusion

NATO's intervention into Kosovo in March 1999 had particular significance as it was the first time, since the founding of the United Nations, that a forcible intervention into another state had been argued on humanitarian grounds and carried out without the authorisation of the UN Security Council.⁴⁷⁹ As Article 2 (4) of the UN Charter prohibits the use or threat of armed force against another state, except in self-defence or in execution of collected measures authorised by the council or the assembly, there is little question that NATO's action in Kosovo were illegal.

However, this intervention remains an important moment in international relations because it raises important questions relating to the recognition of the commitment of the international community to the protection of human rights even when confronted with the long-held norm of national sovereignty and legal restrictions on the use of force without UN authority. This chapter analysed the legitimacy of NATO's intervention based on four criteria; just cause (a supreme humanitarian emergency, last resort, proportionality, and a positive humanitarian outcome).

All four criteria were met. The displacement of the Kosovar Albanians in March, 1999, together with intelligence of future ethnic cleansing, undoubtedly constituted a supreme humanitarian emergency and, therefore, a just cause for intervention using Wheeler's solidarist criterion. The second criterion, that the use of force should only be used as a last resort, was judged to have been complied with, as NATO acted constructively for six months prior to the use of force, to attempt to achieve a diplomatic settlement.

⁴⁷⁹ With the partial exception in respect of India's intervention into East Pakistan. See Chapter 6.

Whether NATO complied with the criterion of proportionality was considered by utilising Walzer's theory of double intention, that is, first that good must be achieved and, second, that evil be reduced as far as possible. It was concluded that, as NATO's overall record of avoiding civilian damage through the accuracy of its targeting was unprecedented, and that as it achieved a positive outcome in ending the killing and enabling refugees to return, therefore, it met the test of proportionality. Finally, it was successful in attaining a positive humanitarian outcome as the intervention achieve the dual objectives of a 'rescue' and also 'protection' by forcing the removal of FRY forces from Kosovo and then replacing them with a peace-keeping force from the UN.

In January 1999, two months prior to the intervention Kofi Annan observed:

If the Council were to be fully faced with the issue, I am not sure whether there would be vetoes on the table or not. But we have to understand in recent history that wherever there have been compelling humanitarian situations, where the international community collectively has not acted, some neighbours have acted. Here for example I have in mind Vietnam in Cambodia. And that did not destroy, I hope the international system, and I think that given the nature of the regime and what was happening there, the international community came to accept it.⁴⁸⁰

These comments reflect the emerging norm of "the responsibility to protect" and support the thesis that humanitarian intervention is morally justified in certain cases, as it is a responsibility of states and governments to protect and secure human rights, and that governments that seriously violate those rights undermine the reason that justifies their political power, and therefore, should not be protected by international law.⁴⁸¹ Therefore, as it was

⁴⁸⁰ UN Press Release SG/SM/6875 (26 January 1999) quoted in Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*, 217.

⁴⁸¹ In fact, it was the events in Kosovo that led to the establishment of the International Commission on Intervention and State Sovereignty and their subsequent report, *The Responsibility to Protect*.

contended in Chapter 5, this intervention should be considered as legitimate, despite the absence of appropriate legal authority as it met the four criteria stipulated in that chapter for legitimacy, namely, just cause (a supreme humanitarian emergency), last resort, a proportional use of force, and a high probability of obtaining a positive humanitarian outcome.

East Timor & Solomon Islands: Co-operative Intervention?

Generally, humanitarian intervention has been defined as a single phenomenon, that is, the coercive interference in the internal affairs of a state, frequently involving the use of armed force, for the purpose of addressing massive human rights violations or preventing widespread human suffering.⁴⁸² This conception of intervention was challenged in Chapter 2 where it was proposed that humanitarian intervention was better understood as a continuum of possible actions by states intended to alter the internal affairs and behaviour of other states threatened with, or undergoing, humanitarian emergencies.⁴⁸³

On 12 September 1999, President BJ Habibie of Indonesia, following a meeting with his Cabinet, telephoned the Secretary-General to call for UN assistance to restore peace and security in East Timor.⁴⁸⁴ In April 2003, the Solomon Island's Prime Minister Sir Alan Kemakeza wrote to the Australian Prime Minister John Howard requesting assistance as his state was paralysed by a political and security crisis, in which armed criminal gangs were holding the rest of society to ransom.⁴⁸⁵ These events represented a defining moment in the history of humanitarian intervention as they both involved the voluntary cooperation of independent states with the international community to prevent a humanitarian emergency that had developed from other than natural causes.

⁴⁸² Welsh, *Humanitarian Intervention and International Relations*., 1

⁴⁸³ Weiss, "Triage: Humanitarian Interventions in a New Era.", 59.

⁴⁸⁴ Ian Martin, "International Intervention in East Timor," in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (Oxford: Oxford University Press, 2004)., 157.

⁴⁸⁵ Elsin Wainwright, "How Is RAMSI Faring? Progress, Challenges, and Lessons Learned.," (Canberra: Australian Strategic Policy Institute, 2005)., 2.

While there were differences in the degree of cooperation by Indonesia and the Solomon Islands, it will be argued that neither humanitarian intervention would have proceeded without the cooperation of their governments. Therefore, both are constructive examples that support the thesis that increasingly humanitarian intervention can be better understood as a range of actions rather than a single phenomenon. Further, these cases highlight that, when the international community intervenes into fragile or failed states for humanitarian purposes, it may involve a range of different actors, for example, a number of countries acting through the United Nations, as in the case of East Timor, or by a regional hegemonic power (supported by other regional actors) as in the case of the Solomon Islands.

The objective in both these cases was not only to alleviate the immediate suffering of the people but to rebuild the institutions of the state, so that both East Timor and the Solomon Islands could return to fully functioning members of the international community. In Chapter 2, four interrelated categories of tasks were identified as being necessary to the process of state-building. Those tasks are security (both internal and external), the creation of legitimate and effective political administrative institutions and participatory processes, the development of a justice system which is impartial and accountable, and the development of economic and social institutions that provide the basis for a viable economy and the provision of essential services such as health and education.

In addition to the tasks outlined above, for state-building to be successful, it also needs to comply with the following general prerequisites. First, although the international community may assist, the primary responsibility and leadership roles must remain with the people of the country in question. Second, security is an essential requirement for state-building. Third, if more than one state is involved in the intervention it is essential that there be a

unity of effort between the international actors. Finally, any intervention must follow a logical sequence.

Following the interventions both states were, and continue to be, the subject of state-building efforts by the international community, the United Nations and Australia in particular. However, rebuilding failed states is difficult and often subject to setbacks. In the first half of 2006 both these states experienced civil unrest that has required new interventions, once again led by Australia. As these interventions were as a result of a request from the host government they can, as before, be classified as non-coercive. This chapter highlights the extent of the humanitarian emergency in each country prior to the intervention, the process by which the non-coercive interventions came about, the range of actors involved in each intervention, the successes and failures of the state-building efforts, and the setbacks to law and order that have led to a re-intervention by the international community.

East Timor⁴⁸⁶

The situation in East Timor in 1999, in many ways, originated from Indonesia's annexation of the colony from Portugal in 1975. East Timor had been administered by Portugal until the fall of the Caetano regime in 1974. Chaotic decolonisation measures led to the emergence of several political parties and the end result was civil war which gave Indonesia the opportunity to intervene, which it did on 7 December 1975.⁴⁸⁷ The United Nations never recognised Indonesia's annexation of East Timor and it has to be said that for 23 years East Timor was an excellent case of international

⁴⁸⁶ After independence East Timor changed its name to Timor-Leste. For consistency this dissertation uses the anglicized version.

⁴⁸⁷ International Crisis Group Conflict History: Timor-Leste. Available from; <http://www.crisisgroup.org> Accessed 2 March, 2006.

non-intervention.⁴⁸⁸ It was only after the fall of Indonesia's President Soeharto in May 1998, that talks carried out under UN auspices between Portugal and Indonesia got a new lease of life, which resulted in Indonesia, in August 1998, proposing limited autonomy for East Timor under Indonesian sovereignty.



Map 10. East Timor

Source: United Nations Cartographic Section

Talks continued between the three parties but, in the meantime, the situation in East Timor deteriorated with increasing violence between the Indonesian National Army (TNI) and FANINTIL (Armed Forces of the National Liberation of Timor-Leste⁴⁸⁹). In December 1998, Australia, which was one of

⁴⁸⁸ During this period Indonesia's armed forces and security apparatus and its civilian administration were responsible for grave violations of human rights. The final report of East Timor's Commission for Reception, Truth and Reconciliation (available from <http://www.etan.org/news/2006/cavr.htm>) details a series of mass killings and claims that Jakarta made a decision to use starvation against the civilian population which resulted in up to 180,000 deaths. For more details see *Truth, Death & Diplomacy in East Timor*, Monthly, April 2006, 24- 32.

⁴⁸⁹ FANINTIL was the military arm of FRETILIN (Revolutionary Front for an Independent East Timor).

the few countries that had recognised Indonesia's annexation of East Timor, decided that it should encourage the Indonesian government to engage in direct negotiations with the East Timorese leadership on the question of autonomy, with the understanding that any act of self-determination would come at a specified point in the future.⁴⁹⁰ President Habibie's reaction was mixed. He rejected the concept of leaving the question of independence open and was coming to the viewpoint that if the autonomy offered by the Indonesian government was not acceptable to the East Timorese, then he was inclined simply to grant them independence. Australia's policy shift was not announced publicly, but became so when Indonesian journalists obtained a copy of the letter between Prime Minister Howard and President Habibie on 12 January 1999⁴⁹¹. It received support within Australia where it was recognised as a modest shift. East Timor leaders held similar views and suggested that Australia's change of view would enable Australia to play a facilitating role towards progress on the East Timor problem.⁴⁹² Indonesia held that Australia's policy shift was premature while talks were proceeding between Portugal and itself at the UN. However, it did lead President Habibie to send his ministers the following instruction to consider a new option:

If the question of East Timor becomes a burden to the struggle and image of the Indonesian people and if, after 22 years, the East Timorese people cannot feel united with the Indonesian people who proclaimed their independence 53 years ago and have a 400 year history, including 350 years under Dutch colonialisation, it would be reasonable and wise, if by a decision of the People's Consultative

⁴⁹⁰ Prime Minister John Howard of Australia emphasised that Australia maintained its longstanding position that the interests of Australia, Indonesia and East Timor were best served by East Timor remaining part of Indonesia. He envisioned a mechanism along the lines of the Matignon Accord in New Caledonia where the final status of East Timor would not be determined in many years. See Martin, "International Intervention in East Timor." 145.

⁴⁹¹ Ibid.

⁴⁹² "East Timor in Transition 1998 -- 2000: An Australian Policy Challenge," (Canberra: Department of Foreign Affairs and Trade, 2001), 35.

Assembly, the 27th province of East Timor can be honourably separated from the unitary nation of the Republic of Indonesia which, in fact, had the good intention to accept them in the struggle to achieve a civil society in the coming millennium.⁴⁹³

As a result of these developments the Indonesians decided, in a Cabinet meeting on 27 January 1999, that if the East Timorese decided to reject the offer of special autonomy, the President would recommend to the People's Consultative Assembly that the law integrating East Timor as Indonesia's 27th province should be revoked.⁴⁹⁴

The Indonesian military was horrified by these developments and began systematically organising and training new pro-integration militias to add to existing ones, to ensure that if the referendum went ahead, the outcome could at least be secured for Indonesia.⁴⁹⁵ The violence reached a peak in April with an attack by a pro-integration militia group on civilians in the churchyard at Liquica resulting in several deaths. This was followed by further deaths in Dili when several thousand militia members attacked the houses of prominent independence supporters. Despite these developments Indonesia insisted that it must retain responsibility for security before and after the ballot, and its rejection of any international peacekeeping presence was maintained both in the tripartite negotiations and in discussions with Australia. While this can be seen as a failure by the international community, it is doubtful that any pressure could have induced the Indonesian government, at that time, to accept international peacekeepers.

An agreement was eventually reached between Indonesia and Portugal on 5 May 1999, which provided for a "popular consultation"⁴⁹⁶ to be held on East

⁴⁹³ Quoted in Martin, "International Intervention in East Timor." 146.

⁴⁹⁴ Ibid.

⁴⁹⁵ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law*. 149.

⁴⁹⁶ Indonesia refused to allow this to be called a referendum. See Ibid.

Timor's future on 30 August 1999.⁴⁹⁷ The signing of these agreements provided for the immediate deployment of UN personnel to begin organising the consultation process in East Timor. The mission, known as the United Nations Mission in East Timor (UNAMET), was mandated to "organise and conduct a popular consultation on the basis of a direct, secret and universal ballot, in order to ascertain whether the East Timorese people accept the proposed constitutional framework providing for a special autonomy for East Timor within the unitary Republic of Indonesia or reject the proposed special autonomy for East Timor, leading to East Timor's separation from Indonesia".⁴⁹⁸ UNAMET included political, electoral, civilian police, information, military liaison and administrative components and, at its full deployment in August 1999, had 210 international staff members, 422 UN volunteers, 271 civilian police, 50 military liaison officers and some 4,000 local staff.⁴⁹⁹

Despite continuing violence in the weeks preceding the ballot, it took place as scheduled and 98.6% of those registered turned out to vote with 78.0% of them voting for independence.⁵⁰⁰ The aftermath of this result was the unleashing across the Territory of massive violence in which hundreds of people were killed, buildings destroyed and virtually the entire population displaced. The violence was not just an emotional response of the militia but was a planned and coordinated operation under the Indonesian Army direction.⁵⁰¹ The existing Security Council resolutions on East Timor provided no mandate for a security deployment and it was considered that, due to the urgency of the matter, a force deployment would need to be a

⁴⁹⁷ Ibid., 149.

⁴⁹⁸ UNAMET Fact Sheet. Available from; http://www.un.org/peace/etimor99/fact_bottom.htm Accessed: 20 March, 2006.

⁴⁹⁹ Ibid

⁵⁰⁰ Martin, "International Intervention in East Timor." 149.

⁵⁰¹ Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law.*, 150. and Martin, "International Intervention in East Timor." 150.

“coalition of the willing”, coordinated and funded by concerned nations but authorised by the United Nations.⁵⁰²

Australia considered the following to be the critical preconditions for such a force.⁵⁰³ First, it would require a Security Council mandate. This was necessary for Australia and for any other potential contributors. Second, the deployment should be a short-term measure aimed at stabilising the security situation in advance of the deployment of a fully fledged UN peacekeeping operation. Third, such a force should have a strong regional component. It was appropriate there be a regional response to the East Timor crisis, just as other crises such as Kosovo had elicited primarily regional responses. Fourth, any such operation would require the agreement of Indonesia.

As the violence continued, the objective of the international community was to obtain Indonesian agreement for international intervention under the terms outlined above, but at that stage President Habibie remained firmly opposed to any early deployment of international forces. Ian Martin refers to the process that followed as “induced consent” but it also represents coercive cooperation which forms part of the continuum of intervention discussed in Chapter 2.⁵⁰⁴ Several pressures to induce this consent or co-operation came into play. Firstly, non-governmental humanitarian agencies highlighted the violations taking place and called for action by both the United Nations and Indonesia. This included the Catholic Church who had priests killed during the violence and, as a result, the Pope spoke out.

Secondly, the breakdown of law and order coincided with the 1999 Asia-Pacific Economic Cooperation Summit in Auckland. This meeting was critical as there was no disagreement on the gravity of the situation or on the

⁵⁰² Martin, “International Intervention in East Timor.” 147.

⁵⁰³ Ibid. 150.

⁵⁰⁴ Ibid. 152.

need to expedite UN efforts to resolve the crisis. As four of the five permanent members of the Security Council were present they were able to indicate that, with Indonesian agreement, Security Council authorisation for a multinational force would be achievable.⁵⁰⁵ Although there was no collective statement, the meeting served as a strong demonstration to Indonesia of the concern shared by the major international and regional powers.

Thirdly, following the Asian economic crisis, Indonesia had become more dependent than ever on the International Monetary Fund and the World Bank for support. World Bank President James Wolfensohn wrote to President Habibie on 8 September, stating "for the international financial community to be able to continue its full support, it is critical that you act swiftly to restore order, and that your government carry through on its public commitment to honour the referendum outcome."⁵⁰⁶

Fourthly, there was increased pressure from the United States. In addition to committing themselves to some military participation in any multinational force, President Clinton, at a press conference he gave when he departed the APEC meeting, said that if Indonesia did not end the violence, it must invite the international community to assist in restoring security.⁵⁰⁷

Fifthly, Japan was a member of the core group coordinating diplomatic efforts at APEC and they expressed their concerns to Indonesia which would have carried considerable weight as they were one of Indonesia's leading investors and trading partners.⁵⁰⁸

⁵⁰⁵ Britain, although not a member had sent their Foreign Minister specifically to discuss this matter.

⁵⁰⁶ Quoted in Martin, "International Intervention in East Timor." 155.

⁵⁰⁷ Ibid., 156.

⁵⁰⁸ Ibid.

The final source of pressure came from the UN itself. The UN Security Council was being briefed daily in informal consultations, and once its mission had arrived back from Jakarta, it began an open session with an address from the Secretary-General, who noted that what was happening in East Timor might well fall into the category of international crimes and he urged Indonesia to agree to the deployment of an international force:

the international community is asking for Indonesia's consent to the deployment of such a force. But I hope it is clear Mr President that it does so out of deference to Indonesia's position as a respected member of the community of states. Regrettably that position is now being placed in jeopardy by the tragedy that has engulfed the people of East Timor.⁵⁰⁹

This coercion finally had the required effect and on the evening of 12 September, President Habibie announced that he had informed the UN Secretary-General that he had agreed to invite a peacekeeping force of "friendly nations" to assist in the restoring of security in East Timor. There were no conditions attached to the acceptance.⁵¹⁰ On 15 September, acting under Chapter VII of the UN Charter, the Security Council authorised the establishment of a multinational force through the unanimous adoption of Resolution 1264. The force mandate was to restore peace and security in East Timor, to protect and support UNAMET, and, within force capabilities, to facilitate humanitarian assistance to the Territory.⁵¹¹ The International Force in East Timor (INTERFET) operated under a unified command and included 22 nations. Led by Australia the other major participants were Thailand, New Zealand, Jordan, the Philippines, Italy, Canada and the Republic of Korea. The US provided unique heavy lift and combat support capabilities. INTERFET established its presence in Dili on 20 September 1999 and remained until the 23 February 2000 when it completed a formal transfer for

⁵⁰⁹ Quoted in *Ibid.*, 157.

⁵¹⁰ "East Timor in Transition 1998 -- 2000: An Australian Policy Challenge." 137.

⁵¹¹ *Ibid.*, 138.

responsibility to the United Nations Transitional Administration in East Timor (UNTAET).⁵¹²

This intervention into East Timor reveals the variable nature of intervention and supports the typology detailed in Chapter 2, that humanitarian intervention should be seen as a range of options on a continuum rather than a single phenomenon. Although pressure was used to obtain Indonesian agreement to the intervention, when it actually took place, it was a non-coercive military humanitarian intervention (INTERFET) and subsequently a non-coercive, non-military humanitarian intervention (UNTAET). It is interesting to compare this with the example of Kosovo examined in Chapter 8 where the situation was similar, that is, it was the province seeking independence from a larger state, but in that example, the intervention was coercive. Additionally, by ultimately obtaining Indonesia's cooperation, it meant that the action could be authorised by the United Nations, which was not the case in Kosovo. The final advantage of the non-coercive intervention was that, unlike Kosovo which is still in an undetermined position, state-building commenced almost immediately in East Timor.

UNTAET was established by Security Council resolution 1272 of 25 October 1999, with a mandate to provide security and maintain law and order throughout the territory of East Timor; to establish an effective administration; to assist in the development of civil and social services; to ensure their coordination and delivery of humanitarian assistance, rehabilitation and development assistance; to support capacity building for self-government; and to assist in the establishment of conditions for sustainable development.⁵¹³ To finance the transitional activities, aid donors, meeting on East Timor in December 1999, pledged more than US\$520

⁵¹² Ibid., 153.

⁵¹³ East Timor – UNTAET Mandate. Available from <http://www.un.org/peace/etimor/UntaetM.htm> Accessed; 25 March, 2006.

million.⁵¹⁴ The Transitional Administrator, in conjunction with the East Timorese political leadership, established the National Consultative Council (NCC), a political body consisting of the 11 East Timorese and 4 UNTAET members. The NCC was consulted on, and consented to, a series of urgent regulations required to establish effective administration including setting up a legal system; re-establishing a judiciary; setting an official currency; creating border controls; taxation; and producing a first consolidated budget for East Timor.⁵¹⁵

UNTAET continued to operate in conjunction with the NCC until East Timor obtained independence on 20 May 2002. Following independence, UNTAET was replaced with the United Nations Mission of Support in East Timor.⁵¹⁶ UNMISET had a mandate to provide assistance to core administrative structures critical to the viability and political stability of East Timor; to provide interim law enforcement and public security; and to contribute to the maintenance of the external and internal security of East Timor. Furthermore, assistance was provided by donor countries such as Australia that contributed to programs in areas such as building a stable and sustainable democracy; assisting East Timor's transition to self-administration by building local capacity through training civil servants; assisting in reconciliation and peace building, good governance, human rights and support for the more vulnerable people in society; and assisting in setting in place a legal and regulatory framework for developing the private sector.

These actions met the requirements for successful state-building outlined in Chapter 2, that is, the provision of security; the creation of legitimate and

⁵¹⁴ East Timor- UNTAET Background. Available from <http://www.un.org/peace/etimor/UntaetB.htm> Accessed; 25 March,2006.

⁵¹⁵ Ibid.

⁵¹⁶ UNMISET

effective political administrative institutions and participatory processes; the development of a justice system which is impartial and accountable; and the development of economic and social institutions that provide the basis for a viable economy; and the provision of essential services such as health and education.⁵¹⁷ Despite this East Timor remained one of the world's least developed nations. State-building efforts continued and were enhanced by East Timor signing a treaty with Australia on 12 January 2006, allowing for an oil and gas development project to go ahead in the Timor Sea.

By early 2006 East Timor was heralded by the international community as a success story. Development experts touted East Timor's peaceful policies, civil society and the foundations of a vibrant economy. "The country has made remarkable progress in laying the foundations for a functioning civil society," the United Nations reported and the World Bank noted that "the future looks fairly optimistic."⁵¹⁸ However, President Xanana Gusmão, noting the approaching end of the United Nations Office in Timor-Leste's mandate, said that much remained to be done in ensuring the continuing improvement of state institutions, law and order agencies and the administration and asked the Security Council to consider establishing a follow-on special political office in East Timor after the mandate expired on 20 May 2006.⁵¹⁹

Fundamental long-standing local differences between groups associated with the eastern and western halves of East Timor provided the basis for the May 2006 unrest which has resulted in a re-intervention by Australia supported

⁵¹⁷ Human Rights Watch in their report *Tortured Beginnings: Police Violence and the Beginnings of Impunity In East Timor* (available from http://hrw.org/english/docs/2006/04/19/eastt13223_txt.htm) released in April 2006 has highlighted the need for continued strengthening of internal accountability mechanisms to prevent a slide into impunity for officials who commit abuses.

⁵¹⁸ Josh Kurlantzick, "Paradise Lost: The U.N. Success Story That Wasn't," *Washington Post*, 4 June 2006.

⁵¹⁹ United Nations Security Council SC/8615. Available from <http://www.un.org/News/Press/docs/2006/sc8615.doc.htm> (Accessed; 25 March, 2006).

by Malaysia, New Zealand and Portugal. The two groups, known as Firaku or Lorasae from the east and Kaladi or Logomania from the West, regularly confront each other in Dili.⁵²⁰ The recent unrest started in March when the Prime Minister, Mari Alkatiri, sacked almost half the country's 1,400 strong army for going on strike, and many police sided with the rebels. A riot by the sacked soldiers was put down by forces loyal to the Prime Minister and the rebels then fled into the hills, threatening civil war unless their grievances were satisfied.⁵²¹ On 25 May, soldiers loyal to the government opened fire on unarmed policeman as they were being escorted to safety by United Nations mediators, resulting in 10 policemen being killed and 27 injured.⁵²² As peacekeepers from Australia and Malaysia arrived in Dili, opposing gangs of young men, divided along lines of ethnicity and armed with rocks and machetes, roamed the streets setting fire to dwellings.⁵²³

These problems have been heightened by tensions between the President and Prime Minister. On one hand there is President Gusmão, a former leader of the pro-independence Falantil guerrillas who fought the Indonesian army for 15 years, is now universally loved and admired in East Timor. On the other side is the Fretilin leader Prime Minister Alkatiri who spent 24 years in exile in Mozambique before returning to East Timor in 1999.⁵²⁴ The new constitution provided for both the creation of a 3,000 strong East Timorese Army (with the President as its commander in chief) and a separate and similarly sized police force which has strong ties to the Prime Minister. The recent split in the army and conflict between the army and police are a reflection of these tensions.

⁵²⁰ James Fox, "Internal Squabbles Cripple Independence," *The Australian*, 26 May 2006.

⁵²¹ "Problem Child: Timor-Leste," *The Economist*, 3 June 2006.

⁵²² Ibid.

⁵²³ Jane Perlez, "East Timor's Capital Spirals into Violence, Despite U.N. Peace Keepers," *New York Times*, 28 May 2006.

⁵²⁴ Mark Dodd, "Leaders at Loggerheads," *The Australian*, 31 May 2006.

The reoccurrence of violence in East Timor has highlighted the difficulties encountered by outside powers in building the institutions of state following a humanitarian intervention. The process of state-building in East Timor demanded that the prerequisites outlined in Chapter 2, (namely the provision of security, the creation of legitimate political institutions, the development of a justice system and the development of economic and social institutions) be pursued until it was clear that it could operate on its own. In East Timor's case, it is possible to assert, when viewed in retrospect, that the international community failed to ensure that East Timor was in a position to handle its own affairs without outside assistance.

While peacekeepers have, to a large extent, stopped the outright violence occurring in East Timor, it will obviously be a long process to rebuild the security institutions which are the first requirement in a successful state-building process. Following that, there will need to be a committed effort, by both the international community and the local political actors, to developing a successful economy that will provide employment and well-being of East Timorese as citizens, so as to prevent future outbreaks of violence.

Solomon Islands

The Solomon Islands, from the beginning, were ill-equipped to manage as a state in the modern international system. There was little sense of nationhood and, as a result, it was difficult to deal with the tensions that arose in the late 1990s between the peoples of Guadalcanal and Malaita over land in and around Honiara.⁵²⁵ These tensions arose out of a shift to the national capital by the Malaitan people after the Second World War, who

⁵²⁵ For background see Trevor H. B. Sofield, "Solomon Islands: Unity in Diversity - the End of a Dream," in *Australia's Arc of Instability*, ed. Dennis Rumley, Vivian Louis Forbes, and Christopher Griffin (Dordrecht: Springer, 2006). 171-190

came to dominate both Guadalcanal's agricultural economy and a large proportion of the jobs in Honiara itself.⁵²⁶

The resentment among the Guadalcanalese towards the Malaitans came to a head in 1998 when, following an inadequate response from the government to their complaints, they formed the Guadalcanal Revolutionary Army or as it became popularly known the Isatabu Freedom Movement (IFM). Armed with homemade guns, bush knives, and bows and arrows they started to use violence and intimidation to force the Malaitans occupying land on Guadalcanal to return to Malaita. The second half of 1999 saw the emergence of a militia group known as the Malaita Eagle Force (MEF) which included large numbers of Malaitans in the Royal Solomon Island's Police, and the MEF quickly came to control Honiara.⁵²⁷ During 2000 there were repeated clashes between militants and the Royal Solomon Island's Police (RSIP) and, fearing a coup, Prime Minister Bart Ulufa'alu requested assistance from Australia but this was rebuffed. On 5 June 2000, the MEF with the support of elements of the RSIP, commandeered the police armoury and forced the Prime Minister to resign at gunpoint.⁵²⁸

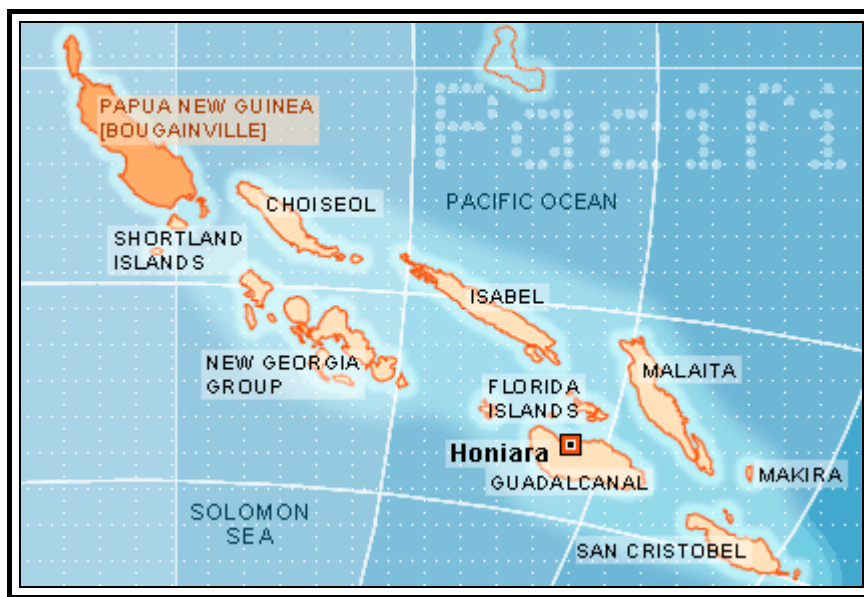
The decline in the security environment was highlighted by the presence of armed gangs roaming the streets of Honiara, which led to the evacuation of foreign nationals, and diplomatic efforts by the Australian and New Zealand governments to re-establish constitutional government. The former opposition leader Manasseh Sogavare was installed as Prime Minister at the end of June and a peace conference was organised in Townsville in October

⁵²⁶ Elsin Wainwright, "Our Failing Neighbour - Australia and the Future of the Solomon Islands," (Canberra: Australian Strategic Policy Institute, 2003).

⁵²⁷ Ibid.

⁵²⁸ Michael Fullilove, "The Testament of Solomons: Ramsi and International State Building," (Sydney: Lowy Institute, 2006), 6.

2000 in an endeavour to resolve the crisis.⁵²⁹ The Townsville Peace Agreement (TPA) established a framework for the cessation of hostilities between the IFM and the MEF, and additionally, provided for a weapons amnesty; reform of the power at RSIP; and a process to provide compensation to those affected by the crisis.⁵³⁰ An Indigenous Peace Monitoring Council (IPMC) was established to monitor and enforce the agreement and this was to be assisted by an International Peace Monitoring Team (IPMT).⁵³¹



Map 11. Solomon Islands Source: United Nations Cartographic Section

However, the Solomon Islands government did not have the capacity to enforce the TPA and the unarmed and loosely mandated IPMT was inadequate to meet the security challenge. By early 2003 the ethnic violence had transformed into criminality and thuggery, including arson, kidnappings, looting, assaults, shootings, torture, rape and extrajudicial

⁵²⁹ Wainwright, "Our Failing Neighbour - Australia and the Future of the Solomon Islands." 22.

⁵³⁰ Fullilove, "The Testament of Solomons: Ramsi and International State Building." 6.

⁵³¹ Wainwright, "Our Failing Neighbour - Australia and the Future of the Solomon Islands." 23.

executions and the state was in serious danger of failing.⁵³² On 22 April 2003, Prime Minister Sir Alan Kemakeza⁵³³ wrote to the Australian government with a request for assistance, and in the first week of June, during a visit to Canberra to meet with the Australian Prime Minister and government officials, he received the "Framework for Strengthened Assistance to Solomon Islands" which set out the basis for an Australian led mission.⁵³⁴ It is worth noting that the Australian Strategic Policy Institute also released a report "Our Failing Neighbour" in June which, while it differed in several important ways from the government's model, most probably assisted in officials' thinking and provided a justification for the subsequent intervention.⁵³⁵

Following these reports, events moved quickly. On 25 June, the Australian Government decided that it would intervene to assist the Solomon Islands, subject to the support of the Solomon's authorities and the Pacific Islands Forum. The Pacific Islands Forum Foreign Ministers meeting on 30 June endorsed the proposed plan. The Solomon Islands formally requested assistance to restore law and order, security and economic sustainability to the Solomon Islands on 4 July. On 17 July, the Solomon Island's parliament passed enabling legislation setting out the powers and immunities of the personnel engaged in the operation. On 24 July a formal agreement was reached amongst all participating States.⁵³⁶

Also on 24 July, the first personnel of the Australian-led Regional Assistance Mission to Solomon Islands were deployed when over 2000 police, military and development advisors from Australia, New Zealand, Papua New

⁵³² Fullilove, "The Testament of Solomons: Ramsi and International State Building." 6.

⁵³³ Sir Alan Kemakeza became Prime Minister following a General Election in December 2001.

⁵³⁴ Fullilove, "The Testament of Solomons: Ramsi and International State Building.", 7.

⁵³⁵ Ibid.

⁵³⁶ Ibid.

Guinea, Tonga and Fiji arrived in the Solomon Islands.⁵³⁷ As noted previously, humanitarian interventions can involve a range of actors, and this intervention demonstrates this fact. Although Australia as the regional hegemonic power took a dominant role, it was supported by the regional organisation, the Pacific Islands Forum and several of the larger regional states. As required under Article 54 of the United Nations Charter, the then Chair of the Pacific Islands Forum, Fiji, notified the United Nations Security Council. The action also received support from the Commonwealth Secretary-General.

From the outset, the Regional Assistance Mission to the Solomon Islands (RAMSI) had several objectives. Its primary purpose was to restore law and order, but it was also to assist with governance and economic reform, and to help rebuild the Solomon Island's institutions, that is, to provide it with the institutions and expertise necessary for it to function as an effective state.⁵³⁸ Such state-building requires the provision of security (both internal and external); the creation of legitimate and effective political administrative institutions and participatory processes; the development of a justice system which is impartial and accountable; the development of economic and social institutions that provide the basis for a viable economy; and the provision of essential services such as health and education. The question is, to what extent has RAMSI been able to meet these requirements in the Solomon Islands in the period since the original intervention?

RAMSI proved to be an effective circuit breaker to the lawlessness occurring in the Solomon Islands. The original intervention involved 1,800 military and 300 police, and was successful in restoring law and order by implementing a weapons amnesty that netted nearly 4,000 firearms and over 300,000 rounds

⁵³⁷ Wainwright, "How Is Ramsi Faring? Progress, Challenges, and Lessons Learned.." 2.

⁵³⁸ Ibid.

of ammunition within the first three weeks.⁵³⁹ Additionally, on Day 21 of the intervention, Harold Keke, a Guadalcanalalese militant and murderer, surrendered to the authorities.⁵⁴⁰ Law and order was RAMSI's primary *raison d'être* and was its strength. It began reforming and restructuring the Royal Solomon Islands Police (RSIP), with over 160 former officers arrested on nearly 600 charges.⁵⁴¹ The provision of a secure environment is critical to the success of any state-building effort and in this respect the Solomon Islands has benefited from the early decisive action of RAMSI.

A number of projects have been commenced to strengthen the political and judicial institutions of the Solomon Islands. The United Nations Development Programme has been providing funding programs to strengthen Parliamentary processes; the Australian Electoral Commission has been working in conjunction with the Solomon Island's Electoral Commission to improve electoral processes; strict Cabinet processes have been introduced with procedures to ensure that they are followed; new public servants have been recruited and trained; improvements have been made to public sector corporate planning; improvements to governance at the provincial level have been implemented and civic education programs developed.⁵⁴²

Finally, RAMSI implemented an economic reform programme. A workable budget was developed, the corruption of the public payroll was eliminated, government debt was managed down, revenue compliance increased and public servants were again paid on time.⁵⁴³ The economic programme was intended to encourage growth and investment in the private sector. The

⁵³⁹ Fullilove, "The Testament of Solomons: Ramsi and International State Building." 9.

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² Ibid.

⁵⁴³ Wainwright, "How Is Ramsi Faring? Progress, Challenges, and Lessons Learned.." 3.

original moves have had success and since RAMSI's arrival there has been positive economic growth.⁵⁴⁴

In addition to meeting the general requirements of state-building, this intervention into the Solomon Islands also fulfilled the general rules as set out in Chapter 2 as being necessary for state-building to be successful. Firstly, at all times the primary responsibility and leadership remained with the government of the Solomon Islands. This was demonstrated originally by RAMSI only intervening after formal requests from the Prime Minister and Governor General of the Solomon Islands and the unanimous passage of the enabling legislation through that country's parliament. RAMSI was a unique kind of authority in the world of state-building as, although it had considerable practical influence, it worked in and with the Solomon Islands government, as its publicity material makes explicit.

RAMSI does not control the government or make national decisions on behalf of the Solomon Islands. The parliament, government, constitutional officeholders and the public service all remain responsible for exercising their respective functions, and they remain accountable to the people of the Solomon Islands.⁵⁴⁵

The second requirement for security was met by the intervention being led by a police contingent supported by overwhelming military force and this resulted in the rapid establishment of internal security and a return to the rule of law. Thirdly, the Australian government negotiated the establishment of the mission, provided the overwhelming majority of the personnel, and has borne the lion's share of the costs. Thus there was never a problem of unity as Australia was clearly the leader of the intervention. As one would intuitively imagine, a state-building effort led by a single developed nation, such as Australia, would have advantages in terms of efficiency, and it

⁵⁴⁴ Ibid.

⁵⁴⁵ Fullilove, "The Testament of Solomons: Ramsi and International State Building." 15.

appears that this has been clearly demonstrated in the Solomon Islands.⁵⁴⁶ Finally, the intervention followed a logical sequence. In the first phase law and order was re-established and a budgetary stabilisation programme implemented. Phase 2 focused on the consolidation of the rule of law and the beginnings of institutional reform. Phase 3 is characterised by a move towards the consolidation of the previous phases, with emphasis on capacity-building and training.⁵⁴⁷

The challenges of state-building are intimidating, particularly in states that are deeply troubled and on the cusp of failing. RAMSI has met the requirements of state-building as detailed in Chapter 2 and the results, over the first two and a half years were promising. In April 2006, however, there was a setback when, following a peaceful general election, rioting broke out over the selection of the new Prime Minister. Instead of fresh leadership, backroom vote-trading, a common element of Melanesian politics, resulted in the election of former Deputy Prime Minister Snyder Rini as Prime Minister.⁵⁴⁸ What began as a spontaneous protest by followers of the losing faction leaders, quickly became a full-scale riot as Honiara's unemployed youth and former militia members joined in.⁵⁴⁹ The perception that the local Chinese businessman, Sir Thomas Chan, helped Rini win the Prime Ministership, resulted in the rioters attacking Chinatown and looting and burning over ninety percent of the Chinese-owned premises. Order was restored when Australia dispatched a contingent of the army and additional

⁵⁴⁶ Ibid., 12.

⁵⁴⁷ Wainwright, "How Is RAMSI Faring? Progress, Challenges, and Lessons Learned.." 3.

⁵⁴⁸ Both Rini and former Prime Minister Sir Allan Kemakeza have been the subject of corruption allegations. In 2000 Rini, then Finance Minister, granted tax breaks to mostly Asian businesses operating in the Solomons. He was never charged with any offence and the tax breaks continued until he was moved to the education portfolio in the next government. Sir Allan negotiated a US\$25 million loan from Taiwan shortly after he took office to pay compensation for property damaged during the civil wars and, while many received no compensation, it was later discovered that Sir Allan's family had received US\$1.5 million. See Michael McKenna, *Corruption claims sparked violence*, The Australian, 20 April, 2006.

⁵⁴⁹ Hamish McDonald, "Islanders Still Unable to Think as a Nation," *Sydney Morning Herald*, 20 April 2006.

police officers to assist. Shortly after the riots Snyder Rini resigned as Prime Minister and was replaced by Manasseh Sogavare. This episode has demonstrated the weakness of the political system and presents the major challenge to the full success of the 2003 RAMSI mission.

Whether this is a major impediment to RAMSI's mission or a temporary setback is too early to tell. It has highlighted one problem that has existed since the start of the intervention, that is, that the government that invited Australia to intervene is perceived by many Solomon Islanders as corrupt. However, Melanesian politics are also fluid and votes of no confidence and changing party allegiances are common.⁵⁵⁰ The Solomon Islands is in a relatively small state, but these events demonstrate that state-building is a difficult and long-term process that may continue for many more years. This intervention represents a model for an intervention into a failing states. Despite the temporary return to civil unrest in April 2006, the process of rebuilding is continuing with particular emphasis being applied to strengthening the security and political institutions. It highlights that, for state-building to be successful, it requires time and a commitment from both parties. Even in a small states, such as the Solomon Islands, this obligation is likely to require a major commitment by powers such as Australia of resources, both human and financial, for many years to come.

Conclusion

In previous chapters it was observed that humanitarian interventions were normally coercive, involving military action designed to address massive human rights violations. However, the interventions into East Timor and the Solomon Islands were different. In both cases the intervention was requested

⁵⁵⁰ See Wainwright, "Our Failing Neighbour - Australia and the Future of the Solomon Islands." 21-27 for a survey of the instability of the political institutions from 1998 to the intervention in 2003.

by the state requiring the intervention, and, therefore, can best be seen as cooperative or non-coercive. In reality, in these cases it is extremely unlikely that any intervention would have proceeded if the cooperation of the two states involved had not been forthcoming.

Both interventions achieved their primary objective of controlling the internal violence, however, as subsequent events have demonstrated, the origins of the instability did not disappear. The result was that forces had to be recommitted to restore civil order to these states. This problem in maintaining order has had a negative impact of the second main objective to rebuild the institutions of state. Four tasks were identified for state-building to be successful, namely, the provision of security (both internal and external); the creation of legitimate and effective political and administrative institutions and participatory processes; the development of the justice system which is impartial and accountable; and the development of economic and social institutions that provide the basis for a viable economy and the provision of essential services such as health and education.

The approach in each state varied with the UN taking the lead role in East Timor, and Australia being almost completely responsible for the Solomon Islands. State-building is a long-term process and the results in both countries are still in a state of flux. Serious outbreaks of violence and rioting in both Honiara and Dili in 2006 have highlighted the difficulties of state-building and the necessity of establishing sound political and security institutions that can withstand tensions between different ethnic groups.

Both these cases show that, for state-building to be successful, it is essential that civil unrest be suppressed, which may require a long-term commitment by the intervening state or states. In the Solomon Islands, despite the recent set-back, the process of state-building has been encouraging. This chapter

examined in detail exactly how the potential for success can be enhanced. It found that RAMSI has met many of the requirements of a state-building model and that this had enhanced the potential for long-term success.

These two examples once again demonstrate that when the international community intervenes into fragile or failed states for humanitarian purposes, it may involve a range of different actors. In both these instances Australia was the lead country in the intervention, but there the similarities end. In the case of East Timor, Australia led a United Nations peacekeeping force consisting of several other countries, under an authorisation from the United Nations.⁵⁵¹ In the Solomon Islands, although assistance was received from a few other Pacific States, Australia was the dominant actor as it was invited to intervene by the Solomon Islands government who formalised the intervention through an act of Parliament. These two interventions underscore that multi-national interventions are likely to be more acceptable to both the recipient and the international community, but that a hegemonic power, Australia in this case, is central to pursuing the intervention in the first place and helping ensuring its success after it proceeds.

⁵⁵¹ Technically, as the intervention was non-coercive authorisation from the UN was not required but Australia refused to act without it as it provided a legal basis for the intervention.

Democratic Republic of Congo: Heart of Darkness

The Democratic Republic of Congo's origins as a state were different from any other African country as it began life, not as a colony, but as the personal property of King Léopold II of Belgium. It was formed through a series of signed “treaties” with 400 African chiefs who were persuaded to give up their sovereignty, and in 1885 Léopold obtained international approval for this personal empire, calling it the Congo Free State.⁵⁵² Of all the colonies that obtained independence in the 1960s, the Congo was probably the worst prepared for the challenges to come. In the year prior to independence only 136 children completed secondary education, and there were no Congolese doctors, secondary school teachers or army officers.⁵⁵³ The first elections were held only a month prior to independence on 30 June 1960.

In reality, at independence the Congo possessed few, if any of the attributes of a successful state, indeed for all its size and resources it was closer to Jackson’s quasi state.⁵⁵⁴ Within days of independence the nation was faced by an army mutiny and a secessionist movement in Katanga province. Internal strife continued both within Katanga and also in the eastern Kivu province until Colonel Joseph Mobutu seized power in a military coup in 1965. However, this replaced civil strife with kleptocratic rule which lasted until 1997 during which time much of the resource wealth of the Congo ended up in Mobutu’s, or his cronies’ pockets, with very little devoted to the needs of the Congolese people. Mobutu was deposed in 1997 by a rebellion led by Laurent Kabila and backed by neighbouring Rwanda and Uganda. When

⁵⁵² Martin Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair* (New York: Public Affairs, 2005), 95.

⁵⁵³ *Ibid.*, 101.

⁵⁵⁴ Robert H. Jackson, *Quasi States: Sovereignty, International Relations, and the Third World*.

Kabila attempted to purge Tutsis from his government, war broke out again, with Rwanda and Uganda intervening to support the rebels and Zimbabwe, Angola and Namibia to support the government. Over 3 million people died in the conflict, three times the number killed in the Rwanda genocide, and despite the presence of UN peacekeeping forces since 2000, civil unrest and loss of life continues in many areas of the country.⁵⁵⁵

The Democratic Republic of Congo is the very embodiment of a failed state and has been since its independence. Its government is unable to provide for the social and economic well-being of its citizens and is unable to guarantee security, either internal or external. In the recent civil strife the country was a loose congress of rival factions, many of them fighting proxy wars on behalf of other African states, in particular Rwanda and Uganda.⁵⁵⁶ According to the International Rescue Committee, the death toll since 1998 could be as high as 3 million and disease, starvation and homelessness are said to have affected 16 million.⁵⁵⁷ Indeed, René Lemarchand notes that “in many ways statelessness conveys a more realistic description of the anarchy in many parts of the country”.⁵⁵⁸ Chapter 3 proposed a conception of responsible sovereignty that incorporated sovereignty as both a judicial (*de jure*) and an empirical (*de facto*) component to both the internal and external dimensions of sovereignty. Under this conception of sovereignty it is contended that the Congo’s sovereignty has been severely compromised for most of its existence as an independent state.

⁵⁵⁵ See International Crisis Group, Conflict History: DR Congo. Available from: to http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=37 (Accessed 31 October, 2005).

⁵⁵⁶ René Lemarchand, "The Democratic Republic of the Congo: From Failure to Potential Reconstruction," in *State Failure and State Weakness in a Time of Terror*, ed. Robert I. Rotberg (Washington, DC: Brookings Institution Press, 2003). 29.

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

In the first instance, the international community's intervention was conventional. Basically, it amounted to providing UN negotiators to assist in ceasefire negotiations. The mission was subsequently expanded to include Chapter 7 peacekeeping operations which included the provision for establishing conditions for democratic elections, due in mid to late 2006. Strikingly, the language used to support this intervention has incorporated the doctrine of "responsibility to protect" detailed in Chapter 5 for this work. The Security Council acknowledged the language used in the doctrine of "the responsibility to protect", when it was included in a unanimous council resolution on the Great Lakes region of Africa in January 2006.⁵⁵⁹ Yet, while the language may be supportive, the means have been far from clear. The institutions of the state are so weak and so meaningless to most Congolese that the objectives of intervention have been far from evident. However, this intervention by the United Nations, and later the European Union, underscores the difficulties of humanitarian intervention by the international community into a state where, not only was there no effective central government, but the humanitarian emergency was largely created by outside actors who were motivated more by self-interest than by interest in the well-being of the Congo.

A Dark Past

Only a few days after independence on 30 June 1960, the Congo's first disaster struck when there was a mutiny amongst its 25,000-man army and in scores of incidents whites were humiliated, beaten and raped and priests and nuns were singled out for special insults. Seized by panic, the white population fled the country. On 11 July the crisis worsened when, with the support of Belgium mining and commercial firms, the Katangan leader,

⁵⁵⁹ Chesterman, "Reforming the United Nations: Kofi Annan's Legacy Gets a Reality Check.", 14.

Moïse Tshombe, declared Katanga an independent state.⁵⁶⁰ Within a fortnight of independence internal security had collapsed, the army had mutinied, the exodus of whites had left the administration without expertise, and the succession of Katanga threatened the integrity of the country. Prime Minister, Patrice Lumumba, appealed to the UN for help which was provided with an airlift of mainly African troops, but the relationship between the UN and Lumumba was not good and they refused his demands that the troops be used to end the succession of Katanga. Facing another secession in south Kasai, the main source of Congo's diamond riches, Lumumba, with the assistance of the Soviet Union, decided to act and led a



Map 12. Democratic Republic of the Congo Source: United Nations Cartographic Section

military expedition which resulted in the massacre of hundreds of Baluba tribesmen and the flight of a quarter of a million refugees.⁵⁶¹ This led to moves to overthrow Lumumba and on 14 September, with the encouragement of the CIA and the connivance of UN officials, Colonel

⁵⁶⁰ Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair.*, 103.

⁵⁶¹ Ibid., 106.

Joseph Mobutu the army Chief Of Staff, declared he was assuming power himself.⁵⁶² Denied protection by UN troops, Lumumba was arrested in Kasai province, severely beaten and handed over into the army's custody, and executed on 17 January 1961.

After five years of civil war, Mobutu seized outright power and acted immediately to suppress disorder and dissent. With stability restored the Congo's resources of copper, cobalt, industrial diamonds and other minerals provided the basis for a growing economy. However Mobutu's political ambitions saw him accumulate vast personal power by ruling by a decree, controlling all appointments and promotions and deciding on the allocation of all government revenues.⁵⁶³ As Mobutu accumulated wealth by the expropriation of foreign businesses, the administration rapidly deteriorated and corruption permeated every level of society. External military assistance and substantial aid from the United States prevented the disintegration of the state, but by the end of the Cold War, the Congo had lost its strategic significance to the West, and at a time when multi-party democracy was being encouraged throughout Africa, Mobutu's dictatorship was no longer acceptable.⁵⁶⁴

The deteriorating situation led to hyperinflation and when local traders refused to accept newly minted banknotes, the armed forces responded by going on looting sprees throughout the country. At the same time major regional conflicts began in North Kivu and Katanga and, rather than serving as an instrument of the state, the army became an active participant in local insurrections.⁵⁶⁵ By 1993 the state had been reduced to powerlessness to the extent that a US diplomat noted that the Congo had all the hall-marks of a

⁵⁶² Ibid.

⁵⁶³ Ibid., 297.

⁵⁶⁴ Lemarchand, "The Democratic Republic of the Congo: From Failure to Potential Reconstruction." 33.

⁵⁶⁵ Ibid.

hollowed-out state.⁵⁶⁶ As a result, the events that arose out of the genocide in Rwanda in 1994 were to have a devastating effect on the Congo, which continues to this day.

The Heart of Despair

To understand the carnage that has occurred in the Democratic Republic of Congo since 1996 attention must first be given to several features of the Great Lakes region of central Africa (Rwanda, Burundi, Uganda, and eastern Congo). There is a lack of correlation between ethnic and geographic maps and the presence of Tutsi and Hutu communities in all these areas shows the arbitrariness of state boundaries.⁵⁶⁷ Additionally, there is a high population density resulting in pressure on land throughout the region. Finally, there are sizeable refugee populations from neighbouring states.

Two refugee flows to the Kivu region of the eastern Congo have been particularly significant in the events that have occurred since 1996. There was the role played by the Tutsi⁵⁶⁸ refugees from the Rwandan Revolution (1959-1962) who appropriated large tracts of land from the indigenous communities. In 1981 a new national law withdrew citizenship rights from all Banyarwanda and the nationality issue came to a head in May 1993 when anti-Banyarwanda violence erupted in North Kivu, causing an estimated 10,000 deaths and the displacement of some 250,000 people.⁵⁶⁹

The other major movement of refugees was in the wake of the Rwandan genocide in 1994, when 1.2 million Hutu refugees crossed the border into

⁵⁶⁶ Crawford Young, "Zaire: The Shattered Illusion of the Integral State," *Journal of Modern African Studies* 32 (1994), 247.

⁵⁶⁷ Lemarchand, "The Democratic Republic of the Congo: From Failure to Potential Reconstruction." 35.

⁵⁶⁸ Identified in the Congo as the Banyarwanda, which also includes the Hutu, many of whom had been in the eastern Congo since pre-colonial times

⁵⁶⁹ Lemarchand, "The Democratic Republic of the Congo: From Failure to Potential Reconstruction." 42.

North and South Kivu.⁵⁷⁰ As many as 100,000 of these refugees were members of the *Interhamwe* militias and remnants of the *Forces Armées Rwandaise* (FAR), the *génocidaires*, and with the support of a refugee aid budget totalling US\$800 million, they established a mini state in Kivu, setting up their own administration, finances and system of control.⁵⁷¹

1996-1997 The Downfall of Mobutu

The arrival of the Hutu refugees split the Banyarwanda community. The Tutsi community in Kivu⁵⁷² were threatened by an array of enemies and despairing of any help from the Mobutu regime turned to Rwanda's strongman, Paul Kagame, for assistance. Kagame assessed the situation: Rwanda had become a target for constant cross-border raids by the *génocidaires*; UN officials in the refugee camps were unable to separate the *génocidaires* from genuine refugees; and the Tutsi communities in Kivu faced continual attacks by Hutu extremists. Kagame decided to act. His decision was backed by President Yoweri Museveni of Uganda who took exception to the way in which lawless parts of eastern Congo were being used by anti-government Ugandan militias as a base from which to attack his regime. At the same time a revolutionary movement dedicated to the overthrow of the Mobutu's dictatorship emerged - Laurent-Désiré Kabila's, *Alliance des Forces Démocratique pour la Libération du Congo* (AFDL).⁵⁷³ During the course of 1996 Rwanda organised military training for the Banyamulenge and Tutsi refugees from Kivu, and also prepared elements of their own army for action in the Congo.

⁵⁷⁰ Ibid.

⁵⁷¹ Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair.*, 526.

⁵⁷² They used the omnibus term "Banyamulenge" to describe themselves and consisted of Zairian Tutsis, Tutsi immigrants from colonial times and Tutsi refugees.

⁵⁷³ Rene Lemarchand, "Patterns of State Collapse and Reconstruction in Central Africa: Reflections on the Crisis in the Great Lakes," *Africa Studies Quarterly* 1, no. 3 (1997). 1.

On 8 October 1996, following a series of clashes between the Banyamulenge and Mobutu's army, the deputy governor of South Kivu ordered all Banyamulenge to leave the Congo within a week, or be expelled or exterminated.⁵⁷⁴ The subsequent retaliation was orchestrated by Kagame, and the AFDL was assisted by troops from Rwanda, Uganda and Angola.⁵⁷⁵ Its intention was to not only eliminate the threats posed to Rwanda by the armed refugee groups, but to overthrow the Mobutu dictatorship and prepare the ground for democracy.⁵⁷⁶

As the Banyamulenge uprising spread from its origins in the south Kivu to the north along the Congo border a tidal wave of Hutu refugees also fled northwards. As the AFDL forces advanced the refugees crowded into a camp surrounded by ex-FAR soldiers and *Interhamwe* militias. When attacked by the AFDL forces, the *génocidaires* retreated and the bulk of the refugees, some 600,000, set out to return to Rwanda.⁵⁷⁷ As the AFDL continued their advance, the *génocidaires* and troops from Mobutu's army fled in all directions killing and looting as they went. The Hutu refugees were caught up in this retreat and tens of thousands, perhaps as many as 200,000, were massacred in genocidal attacks by the AFDL forces.⁵⁷⁸ One province after another joined the rebellion against Mobutu and in May 1977 the AFDL occupied Kinshasa where Kabila was sworn in as president on 17 May 1977. Unfortunately, Kabila had no political program, no strategic vision, and no experience of running a government and there was

⁵⁷⁴ Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair.*, 531.

⁵⁷⁵ Angola supported the action as it was resentful of Mobutu's support for the Angolan rebel leader Jonas Savimbi and his UNITA movement.

⁵⁷⁶ Lemarchand, "The Democratic Republic of the Congo: From Failure to Potential Reconstruction." 43.

⁵⁷⁷ Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair.*, 534.

⁵⁷⁸ Ibid.

considerable resentment about the number of Rwandans within his advisers and the presence of Rwandan troops in the capital.⁵⁷⁹

1998- 2002 The Seven Nation War

Despite the change of regime, the *Interhamwe* and ex-FAR militias continued to use the Congo as a base from which to launch attacks on Rwanda. Similarly, anti-Museveni groups continued to raid Uganda from the eastern Congo. At the same time, Kabila sought to assert his independence from his former allies by recruiting *Interhamwe* and ex-FAR militias, and by dismissing the army chief-of-staff and all other Rwandan soldiers and ordering them to return home.⁵⁸⁰ As a result, Kagame and Museveni began to plan for a further regime change. Like Kabila in 1996, Kagame and Museveni recognised that they needed a Congolese instrument to lend credibility to their plans. Therefore, the rebellion was started in late July 1998 in the name of a Congolese's group called the *Rassemblement Congolais pour la Démocratie* (RCD) which incorporated former Mobutu politicians and army officers, Congolese Tutsis, Banyamulenge and former AFDL leaders who had fallen out of Kabila's inner circle.⁵⁸¹ But, as in the first rebellion, the driving force was the Rwandan army.

In early August, Kagame airlifted troops to a military airbase 200kms west of Kinshasa where thousands of troops from Kabila's *Forces Armée Congolaises* deserted and joined the rebellion on the rebel side. Just as it appeared that Kinshasa seemed about to be overrun it was saved by the intervention of Angola. Angola had been a supporter of the rebels during the 1996 rebellion, but was concerned that a vacuum in the Congo would allow UNITA forces to renew their offensive in Angola and, therefore, decided to support the

⁵⁷⁹ Ibid., 538.

⁵⁸⁰ Africa's Seven-Nation War, International Crisis Group Democratic Republic of Congo Report No.4

⁵⁸¹ Ibid.

government in Kinshasa.⁵⁸² Additionally, Zimbabwe which had no strategic interest in the Congo, sided with the government in Kinshasa in order to obtain lucrative mineral concessions. Namibia and Chad decided to link up with Angola and Zimbabwe and Burundi similarly aligned themselves with Rwanda and Uganda.⁵⁸³

The intervention by Angola was decisive and by the end of August the Congo was split in half, with Angola and Zimbabwe supporting Kabila in Kinshasa and Rwanda and Uganda in control of the North East of the country. All the foreign countries involved in the intervention plundered the Congo's extensive mineral and natural resources. The Congo conflict was highly profitable for the groups of army officers, politicians and businessmen from the outside states exploiting it. Angola gained control of Congo's petroleum distribution and production and also a slice of its diamond business while Zimbabwe established joint ventures in diamonds, gold and timber and won a stake in the State mining company together with a management contract.⁵⁸⁴ For their part Rwanda and Uganda treated the eastern Congo as their own, looting it for gold, diamonds, timber, coltan, coffee, cattle, cars and other valuable goods.⁵⁸⁵

Even as these states were plundering the Congo, the situation in the east of the country deteriorated rapidly. The RCD split into two rival factions, one backed by Rwanda and one by Uganda. The entire eastern region became a battleground for competing armies and militias, looting, raping and killing indiscriminately. *Interhamwe* and ex-FAR militias formed the new *Armée de Liberation du Rwanda* (ALIR) to fight the Rwandan Patriotic Army, helped by Zimbabwe which responded with its RCP allies with coercion, torture and

⁵⁸² Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair.*, 539.

⁵⁸³ Africa's Seven Nation War.

⁵⁸⁴ Meredith, *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair.*, 540.

⁵⁸⁵ Ibid.

massacres.⁵⁸⁶ Hutu rebel groups were trained in Katanga by Zimbabwe troops to attack Burundi from bases in Kivu, while Burundi rebels served as mercenaries in Kabila's army, along with large contingents of *Interhamwe* and ex-FAR soldiers that were used to defend strategic towns.⁵⁸⁷ Banyamulenge fighters split into separate factions, some opposing Rwanda's occupation, and local *Mai-Mai* militias were embroiled in many wars, some fighting against the Rwandans and their Congolese allies, and others against the *Interhamwe*.⁵⁸⁸ Further north, rival militias armed by Uganda repeatedly clashed over control of gold, diamonds and coltan sites. Additionally a fierce tribal war broke out in the Ituri region between two groups both armed by Uganda for its own purposes, who also backed another group, the *Movement pour Libération du Congo*, which opened a new front and gained control of the north of the country.

During this period all efforts at negotiations failed because Kabila obstructed any progress, but when he was shot and killed on 16 January 2001, a peace-fire was negotiated and eventually signed in July 2002. An interim coalition was established headed by Kabila's son, Joseph, and included representatives from all the main Congolese factions. The foreign armies from Rwanda, Burundi, Uganda, Angola and Zimbabwe were required to withdraw. In four years of civil war more than 3 million people had died, mostly from starvation and disease, the largest toll of any conflict in African history.⁵⁸⁹

But in the eastern Congo the violence continued with rival militias acting as proxy forces for sponsors in Rwanda, Uganda and Kinshasa, and others controlled by local warlords continued to plunder rape and kill. Additionally, conflict continued in Katanga province. During the war Kabila

⁵⁸⁶ Ibid., 542.

⁵⁸⁷ Ibid.

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid.

created *Mai-Mai*⁵⁹⁰ militias in the region to stem the advance of Rwandan backed rebels, but by the end of 2002 the *Mai-Mai* had become a serious threat to the local population and the local officials who had originally armed them were now unable to control them. In November 2002, *Mai-Mai* fell out with the army troops and both sides went on a rampage attacking the local population and 100 civilians were killed and 75,000 were displaced.⁵⁹¹ Despite repeated efforts at negotiations these militias remain to be integrated into the national army and are fighting each other and the army over poaching and taxation rights.

United Nations Intervention

On 10 July 1999, under the auspices of the Organisation of African Unity and the United Nations,⁵⁹² the ceasefire agreement was signed in Lusaka, Zambia to end a conflict.⁵⁹³ Under the Lusaka Ceasefire Agreement clear ceasefire lines were defined and agreed upon by all belligerents and the agreement also recognised the various armed political groups supported by Uganda and Rwanda, that were in control of part of eastern DRC. It also called for the disarmament of armed groups not party to the agreement, including the *Mai-Mai*, *Interhamwe*, and other Rwandan, Ugandan and Burundian insurgent groups.⁵⁹⁴

⁵⁹⁰ Mai-Mai, also known as Mayi-Mayi, is a general term referring to a broad variety of Congolese militia groups who were active in the Second Congo War in the Democratic Republic of the Congo (DRC).

⁵⁹¹ Katanga: The Congo's Forgotten Crisis. International Crisis Group Africa Report No.103.

⁵⁹² In April 1999, to further demonstrate his commitment to regional peace efforts, the Secretary-General appointed Moustapha Niasse (Senegal) as his Special Envoy for the DRC peace process, to be assisted by the Secretary-General's Representative for the Great Lakes Region, Berhana Dinka, who had been appointed in December 1977. The Security Council welcomed the appointment of the special envoy in its resolution 1234 of 9 April 1999.

⁵⁹³ *Democratic Republic of the Congo: "Our Brothers Who Helped to Kill Us" -- Economic Exploitation and Human Rights Abuses in the East* (Amnesty International, 2003); available from <http://web.amnesty.org/library/Index/ENGAFR620102003>. (Accessed 25 April 2006).

⁵⁹⁴ Ibid.

By virtue of the Lusaka Ceasefire Agreement, a neutral ceasefire monitoring body was to be set up as well as a joint military committee (JMC). The Security Council, by its resolution 1258⁵⁹⁵ of 6 August 1999, authorised the deployment of up to 90 United Nations military liaison personnel, along with necessary civilian staff, to the capitals of the signatory states; to JMC provisional headquarters; to the military headquarters of the main belligerents in DRC as conditions permitted; and to other areas deemed necessary by the Secretary-General. On 1 November 1999, the Secretary-General recommended an extension of the UN mandate and sought authorisation for the establishment of United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) and the deployment of 500 military observers. This was approved by the Security Council in its resolution 1279 of 30 November 1999. In a series of Security Council resolutions⁵⁹⁶ between February 2000 and October 2004 the troop levels for the mission were raised from the original 500 observers to a total of 16,700.

MONUC's principal mandate was to deploy and maintain a presence in the key areas of potential volatility in order to firstly promote the re-establishment of confidence, in particular by deterring the use of force to threaten the political process, and secondly, to allow United Nations personnel to operate freely, particularly in the eastern part of the Democratic Republic of Congo. Additionally, they were required to ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence and to contribute to arrangements for the security of institutions and the protection of officials of the transitional government in Kinshasa, until an integrated police unit for Kinshasa was ready to take over this responsibility. Finally, they were to assist in the promotion and

⁵⁹⁵ Details of all UNSC Resolutions are available from <http://www.un.org/documents/scres.htm>

⁵⁹⁶ UNSC resolutions 1291(24 February 2000), 1445(4 December 2002), 1493(28 July 2003), 1565(1 October 2004). Available from <http://www.un.org/documents/scres.htm>

protection of human rights, investigate human rights violations and cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law were brought to justice.⁵⁹⁷

In May 2005 a new constitution was approved by Parliament and subsequently given public backing in a referendum in December. Elections were scheduled for 30 June 2006, but could be delayed for several months due to continuing unrest in the country. In particular, the situation in North and South Kivu remains grim. A self-styled general, Laurent Nkunda, a former commander of the main rebel group that controlled the eastern part of the country, rejects integration into the national army and is determined to overthrow the Kinshasa government. He claims to want to protect Congolese who speak Kinyarwanda, a language of Rwandan origin, and has united the Tutsis and Hutus in North Kivu, where both scribes speak Kinyarwanda. Nkunda attacked government soldiers and UN peacekeepers in early 2006, and remains a threat to peace and security in these provinces.⁵⁹⁸ Similarly, there are tensions in the mineral-rich Katanga province, between natives and perceived outsiders, and between the army and the armed *Mai-Mai* fighters. Tens of thousands of people were forced from their homes in early 2006 by an army crackdown on the local *Mai-Mai* commander, and the UN troops are largely ineffective, as fewer than 1,000 are deployed in a region the size of France.⁵⁹⁹ In the north-eastern province of Ituri strife began in 2003 when rival militias from two local tribes clashed over the control of the capital and at various stages both have been backed by Uganda. However, ethnic differences are no longer the driving factor behind the violence in Ituri, as

⁵⁹⁷ See mandate in UNSC resolution 1565 (1 October 2004). Available from <http://www.un.org/documents/scres.htm>

⁵⁹⁸ See Reuter Foundation Alert Net, Congo (DR) Conflict. Available from http://www.alertnet.org/db/crisisprofiles/ZR_CON.htm?v=at_a_glance. (Accessed: 15 June, 2006).

⁵⁹⁹ Ibid.

both groups have joined together to protect their control of the region against the government and the United Nations.⁶⁰⁰

Another major area for concern is Orientale province, also in north-eastern Congo. Here, the reclusive leader of Uganda's Lord's Resistance Army (LRA) has established an enclave in the Garamba National Park, and not only has the LRA's conflict with Uganda displaced almost as many people as the strife in Darfur, it is now threatening the peaceful rebuilding of the neighbouring South Sudan and the Democratic Republic of Congo. Despite being indicted by the International Criminal Court in The Hague its leader, Joseph Kony, remains elusive and the transitional government in the Congo does not appear to have the resources to restrict his activities.⁶⁰¹

In view of the continuing civil unrest in the lead-up to the elections on 30 June the Security Council authorised the deployment of an European Union military mission in support of the UN mission in the Congo. Even though the council was not divided on the issue, considerable effort was required within the EU to gain approval for the mission following the initial request by the UN Secretariat in December 2005. A total of around 1,200 forces will to be deployed at the end of June 2006 and will be available to be used upon request from the UN Secretary-General in cases of specific emergencies.⁶⁰²

Conclusion

The Democratic Republic of the Congo is the epitome of a failed state, and indeed has fluctuated between being a fragile and failed for its entire period since independence in 1960. With the potential to be one of the richest countries in Africa, blessed with vast natural and mineral wealth,

⁶⁰⁰ Ibid.

⁶⁰¹ "Africa's Most Wanted; Uganda, Sudan and Congo," *The Economist*, 3 June 2006.

⁶⁰² Security Council Report No.6. Available from: <http://www.securitycouncilreport.org>. Accessed; 25 May, 2006.

nevertheless its government has been unable to provide for the social and economic well-being of the vast majority of its citizens, with the spoils falling to a small elite. Additionally, at many times throughout its history, and particularly since the mid-1990s it has been unable to guarantee security, either internal or external. Many areas outside the capital, Kinshasa, are controlled by local militias, often backed by neighbouring states. While many of the events described in this chapter occurred prior to the development of the Failed States Index and the State Capacity Index, the Democratic Republic of the Congo ranks 2 on The FSI and 205 on the SCI in 2005 (see appendices for full details) which demonstrates that in 2005 it was still highly vulnerable to conflict and was unable to provide an adequate level of political goods and services to its citizens.

State failure impacts directly on the sovereign status of a country and, judged against the Responsible Sovereign Matrix developed in Chapter 3, it is clear that the Democratic Republic of the Congo's sovereignty has been seriously compromised over the period in question. While its external sovereignty is still recognised under international law it has been truncated by the presence of UN peacekeepers within the country, and empirically, by the actions of its neighbours in either taking action directly within the Congo or supporting local militias. Internally, the central government fails its responsibilities under international humanitarian law and, additionally, is not able to project its authority to all parts of the country.

Under the emerging norm of the “responsibility to protect” it is argued that although the primary responsibility for the protection of a state’s citizens lies with the state, if it is unable or unwilling to protect its population then the responsibility shifts to the international community. Without a doubt, the Democratic Republic of the Congo, particularly in the last ten years, has not been able to meet this obligation. However, the situation has been

complicated by the fact that the civil unrest and resulting humanitarian emergency has not just been the result of internal factors but of non-humanitarian interventions by several neighbouring states that have added immensely to the suffering of the Congolese people.

Despite this, the international community has attempted to fulfil its obligation implied in “the responsibility to protect” by authorising a UN force of almost 18,000 peacekeepers under Chapter VII of the UN Charter. Additionally, the EU has dispatched a force of 1,200 troops primarily for use during the election campaign. However, in addition to the Chapter VII authorisation, the Security Council has also acknowledged that the governments in the region have a primary responsibility to protect their populations from attacks by militias and armed groups. It uses the language of “the responsibility to protect” to call on all regional governments to cease their interference in the Congo.

While the intentions of the UN mission are fine, the ultimate success of the mission remains doubtful. State-building will not be successful until security is improved and this is unlikely while Rwanda and Uganda, in particular, continue to intervene, directly or indirectly, in the east of the country. The intervention of the EU may be crucial in enabling the elections to be held which is the first of many steps in assisting in the reconstruction of the Congo after a decade of chaos and death, and forty years of misrule.

Darfur: Never Again, Revisited

In light of the failures of the interventions into Somalia, Rwanda and Srebrenica in the 1990s, significant segments of the international community professed that inaction in the face of humanitarian emergencies was unacceptable and that never again must such failures be allowed to happen. Over the following decade the international community faced another emerging trend. In Haiti, Sierra Leone, Kosovo, Cote d'Ivoire, East Timor and the Solomon Islands, it was coalitions of international and/or regional organisations backed by a hegemonic power that instigated interventions into intrastate emergencies. The British and ECOWAS were critical in the intervention in Sierra Leone, while the French took the lead in Cote d'Ivoire. In both Haiti interventions it was the US and France that led the interventions while NATO and the US played the crucial role in Kosovo. Australia played the leading role with the UN in East Timor and the Pacific Islands Forum in the Solomon Islands. In each of these cases it was the use of these coalitions of hegemonic states and international organisations that was crucial to the success or partial success of these interventions. They provided the political will and supplied much of the military resources that were required to ensure the success of these missions.

In February 2003, conflict broke out in the Darfur region of the Sudan which has resulted in an humanitarian emergency possibly unmatched since the genocide in Rwanda. To date, up to 300,000 people have died and maybe two million have been displaced.⁶⁰³ Despite resolutions by the United Nations, claims of genocide by the US Secretary of State, and intervention by members

⁶⁰³Roberta Cohen and William G. O'Neill, "Last Stand in Sudan," *Bulletin of the Atomic Scientists* 62, no. 2 (2006), 51.

of the African Union (AU), the situation remains critical. The AU's mission is ambitious but it is ill-equipped to confront the scale of the crisis. It requires more troops and critical capacities, such as airlift and logistical equipment, that would need to be supplied by outside states. Suddenly, the promise of "never again" looks hollow. This chapter examines what has occurred and why the response of the international community, to date, has not fulfilled the promise of "never again".

Background to a Humanitarian Disaster

Darfur is located in the Western Sudan and it had a pre-conflict population of about 6 million people. Darfur was populated by over 30 ethnic groups, all Muslim, who identified themselves as either of Arab or African ancestry. The two groups have traditionally competed for resources and this competition became more intense in the 1970s as continual droughts restricted water resources. As the nomadic Arab herders moved southwards they encountered the more sedentary African communities and confrontations increased in frequency.

At the same time the central government in Khartoum was also engaged in a civil war against the Sudanese Peoples' Liberation Army/Movement (SPLA), which, in effect, was a conflict between the Muslim north and the Christian/animist south. It was during this period that the government in Khartoum co-opted Darfur's loosely organised Arab militias and turned them into a ready-made army to fight the SPLA.⁶⁰⁴ During this period African groups in Darfur, on several occasions, took up arms to challenge the

⁶⁰⁴ Cheryl O Igiri and Princeton N Lyman, "Giving Meaning to "Never Again": Seeking an Effective Response to the Crisis in Darfur and Beyond," (Washington D. C.: Council on Foreign Relations, 2004). 2.



Map 13. Sudan

Source: United Nations Cartographic Section

government's policies in the region which they saw as discriminatory. In retaliation the Khartoum government used the Arab militias or the “Janjaweed” to suppress the African factions in Darfur.⁶⁰⁵ As a result of these actions the government in Khartoum transformed a largely environment-

⁶⁰⁵ The term “Janjaweed” is an amalgamation of three Arabic words for ghost, gun, and horse that historically referred to criminals, bandits or outlaws in Darfur. However, since the crisis in Darfur, many Africans subject to the attacks, have used the term to refer to the government-supported nomadic Arab militias attacking their villages. The Sudanese government and members of the militias reject the name Janjaweed. See Ibid., 31.

driven resource competition into a large-scale violent confrontation with serious racial and ethnic overtones.⁶⁰⁶

The present emergency began in February 2003, when the Sudan Liberation Army/Movement (SLA)⁶⁰⁷ and the Justice and Equality Movement (JEM), attacked and captured Gulu, a provincial capital in central Darfur. The rebels claimed that the people of Darfur, both African and Arab, had suffered under Khartoum's neglectful policies and called for a united democratic Sudan with greater political autonomy and resources for the people of the Darfur region.⁶⁰⁸ A ceasefire agreement was signed on 3 September 2003 but it was clear that the Khartoum government was intent on achieving a military solution and the peace agreement broke down on 15 December 2003, when the government enlisted the Janjaweed, as it had in the past, to defeat the rebellion.⁶⁰⁹

By April 2004, the year-long emergency had become what the UN and United States described as the worst humanitarian crisis in the world. On 8 April 2004 the Sudanese government and the two Darfur rebel groups, the Sudan Liberation Army/Movement and the Justice and Equality Movement, signed a renewable 45 day humanitarian ceasefire in N'djamena, Chad on 8 April 2004.⁶¹⁰ As part of this agreement the African Union was mandated to send military observers to monitor and report on the ceasefire. Despite this ceasefire, security and humanitarian conditions failed to improve and the killing and displacement of the African villages by the Janjaweed continued.

⁶⁰⁶ Ibid. 2.

⁶⁰⁷ Internal disagreements between leaders led to a split into two factions in November, 2005. known as SLA/MM and SLA/AW after the initials of their leaders. The SLA is also sometimes referred to as the SLA/M.

⁶⁰⁸ Igiri and Lyman, "Giving Meaning to "Never Again": Seeking an Effective Response to the Crisis in Darfur and Beyond." 3.

⁶⁰⁹ Ibid.

⁶¹⁰ "Imperatives for an Immediate Change: The African Union Mission in Sudan," *Human Rights Watch* 18, no. 1(A) (2006). 3.

Was this Genocide?

Since the humanitarian emergency began in Darfur three years ago, at least 200,000 people, and may be up to 300,000, have died; another 2 million people in a population of 6 million have been displaced.⁶¹¹ Evidence of the developing events in Darfur became clear early in 2004. Amnesty International reported receiving details of "horrifying attacks against civilians in villages by warplanes, soldiers and pro-government militias" in mid-February.⁶¹² In March 2004 the United Nations began receiving consistent reports about gross human rights violations in Darfur and noted that the violence appeared to be particularly directed at a specific group based on their ethnic identity.⁶¹³

In reports in April and May 2004 Human Rights Watch found credible evidence that the government of Sudan had purposely sought to remove, by violent means, African groups from large parts of Darfur in operations that correspond to definitions of ethnic cleansing.⁶¹⁴ Human Rights Watch's reports also conclusively linked the government of Sudan to the Janjaweed by documenting how high-ranking civil servants are greeted Janjaweed and then turned them over to the military for arming and training.⁶¹⁵ Following a UN team's investigation in Sudan, the UN High Commissioner for Human Rights briefed the Security Council on 7 May 2004, and his report outlined consistent patterns of abuses against African communities in Darfur which included serial attacks on civilians, indiscriminate air-strikes and ground

⁶¹¹ "Bring on the Blue Helmets," *The Economist*, 9 February 2006.

⁶¹² Amnesty International Press Release, "Sudan: international community must act now to guarantee the protection of civilians," February 17, 2004.

⁶¹³ *Post-Conflict Reconstruction: The Role of the World Bank*, (Washington, D.C.: World Bank, 1998). 6.

⁶¹⁴ "Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in the Western Sudan," *Human Rights Watch* 16, no. 6(A) (2004). 40.

⁶¹⁵ *Ibid.* 46.

assaults on un-armed civilians, disproportionate use of force, sexual violence, displacement, and pillaging and wanton destruction.⁶¹⁶

The 10th anniversary of the Rwanda genocide was in April 2004 and this may have galvanised attention as to whether events occurring in Darfur were in fact, genocide. Indeed, the US Secretary of State, Colin Powell, speaking before the US Senate Foreign Relations Committee, said that the killings in the Darfur region constituted genocide and that this conclusion was based on interviews with refugees who had fled Darfur.⁶¹⁷ As the United States had ratified the Convention on the Prevention and Punishment of the Crime of Genocide this should have obligated it to take action to prevent any further genocide. In fact, it did no such thing, even when the US Congress, a few months later, also passed a resolution branding the conflict as genocide.

The question, therefore, is whether or not this is genocide. Article 2 of the convention defines genocide as:

acts committed with the intent to destroy, in whole or part, a national, ethnic pool, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁶¹⁸

Three points need clarification. First, is the killing in Darfur genocide? It is not necessary for there to be extreme manifestations for a crime to count as genocide. The convention does not distinguish between "ethnic cleansing", which Darfur certainly is, and genocide. Second, are the groups that have

⁶¹⁶ Human The report quoted in *Post-Conflict Reconstruction: The Role of the World Bank.*, 8.

⁶¹⁷ William G. O'Neill and Violette Cassis, "Protecting Two Million Internally Displaced: The Successors and Shortcomings of the African Union in Darfur," (Washington D. C.: The Brookings Institution -- University of Bern, 2005). 5.

⁶¹⁸ Convention on the Prevention and Punishment of the Crime of Genocide. Available from <http://www.hrweb.org/legal/genocide.html>

been targeted sufficiently clear and distinct to warrant the name "ethnic groups"? As in the case of Rwanda the dichotomy between Arab/African is blurred as there has been considerable intermarriage between the two groups. Finally there is the question of intent and this may vary between the Janjaweed and the government in Khartoum.⁶¹⁹ In the end whether or not the emergency in Darfur was a genocide or not will most probably be determined by the International Criminal Court, which has been charged with the responsibility of investigating and prosecuting any crimes that arise out of this tragedy.

Indeed, the debate over whether or not this was a genocide may have tended to paralyse the international community rather than galvanise them. There was sufficient information to indicate that the situation in Darfur consisted of massive human rights violations and ethnic cleansing at the minimum, and this should have been sufficient for action, not cause endless debate.⁶²⁰ Gareth Evans of the International Crisis Group has noted that, rather than arguing over the issue of "genocide or not genocide", it would be better to use the familiar label of "crimes against humanity" and leave it to prosecutors and judges in the international courts to work out which laws had been breached.⁶²¹ Instead, it is clear that the reaction of the international community has been one of, too little, too late.

The Role of the International Community

The African Union mediated an humanitarian ceasefire agreement, signed on 8 April 2004 between the Sudanese government and two Darfur rebel groups, the SLA and the JEM. The United Nations estimated that, between

⁶¹⁹ Alex de Waal, "Tragedy in Darfur," *Boston Review*, no. October/November (2004).12.

⁶²⁰ Igiri and Lyman, "Giving Meaning to "Never Again": Seeking an Effective Response to the Crisis in Darfur and Beyond." 20.

⁶²¹ Gareth Evans, *Responsibility to Protect: Never Say Never Again* (2006) available from <http://www.crisisgroup.org/home/index.cfm?id=4091>. (Accessed 3 May 2006).

30,000 and 50,000 people had died, 200,000 had fled to neighbouring Chad and a further 1.2 million displaced people remained in Darfur.⁶²² What follows is an examination of the actions undertaken by the various actors in the international community did to help resolve the situation.

The African Union

At this stage it was clear that the UN and the major powers were not going to intervene militarily to stop the killing, so the African Union established the Ceasefire Commission (CFC), subsequently renamed the African Union Mission in Sudan (AMIS), and sent a small group of military observers to monitor and report on the ceasefire.⁶²³ The African Union's intervention was a first for the organisation. Its predecessor, the Organisation of African Unity, was well-known for refusing to interfere in the internal affairs of member states and, for example, took no action to prevent the genocide in Rwanda.⁶²⁴ It is also worth noting that the AU is the world's only regional organisation that explicitly recognises its right to intervene in a member state on humanitarian and human rights grounds.⁶²⁵

The African Mission in Sudan was originally established as a monitoring mission following the signing of the humanitarian ceasefire agreement on 8 April 2004, by the government of Sudan, and the two rebel movements from the Darfur region. At a meeting of the Peace and Security Council in July the mission was enlarged from the original 80 military observers and a protection force of 600 troops to a total staff of 3,320. On 20 October 2004, the AU Peace and Security Council further enhanced AMIS to include assistance

⁶²² Human Rights Watch "Background" Available from <http://www.humanrightswatch.org/backgrounder/africa/sudan/2004/>

⁶²³ O'Neill and Cassis, "Protecting Two Million Internally Displaced: The Successors and Shortcomings of the African Union in Darfur." 5.

⁶²⁴ Cohen and O'Neill, "Last Stand in Sudan." 51.

⁶²⁵ See the Constitutive Act of the African Union available from: http://www.au2002.gov.za/docs/key_oau/au_act.htm

for confidence-building, protection of civilian and humanitarian operations and observance of all agreements signed since the N'djamena of 8 April. The AU, has thereafter gradually deployed 6,171 military personnel and 1,560 civilian police.⁶²⁶

However, these troop levels have proved too small to protect the civilians in Darfur. A combination of a passive ceasefire monitoring mission and a restricted peace-keeping mission means that AIMS's mandate leaves the troops nearly powerless, without the authority to disarm attackers or to properly protect civilians.⁶²⁷ Additionally, Sudan has continually obstructed the African Union mission.⁶²⁸ It originally agreed to the AU presence under pressure, in order to prevent a stronger international intervention. As a result the Sudanese army often accompanies the AU patrols, which constrains its effectiveness as villagers who have just been attacked by the Sudanese army and its allied militias, are wary of talking to an investigating patrol that includes representatives of the attacking groups.⁶²⁹

The United Nations

The United Nations Security Council is divided on the Darfur issue because of differences between permanent members on the council. Russia and China have generally supported the Sudanese government due to their economic interests. In particular, Resolution 1556 (2004), acting under Chapter VII of The Charter of the United Nations, endorsed the AU's mission and called upon the government of Sudan to fulfil the commitments it made under the 3 July 2004 Communiqué⁶³⁰ to allow international relief for the

⁶²⁶ "Aims: Sudan (Darfur)," *Conflict Trends* April (2005). 52.

⁶²⁷ Cohen and O'Neill, "Last Stand in Sudan." 53.

⁶²⁸ Ibid. 53.

⁶²⁹ Ibid. 54.

⁶³⁰ Signed by the Sudanese government and the United Nations Secretary-General, Kofi Annan, in which the government committed to improve the situation in four areas: humanitarian access, human rights, security, and political resolution of the conflict.

humanitarian disaster. This has been reinforced in several subsequent resolutions culminating in resolution 1672 (2006). Additionally, in 2005 the Security Council referred the situation in Darfur to the International Criminal Court in The Hague because of the massive crimes that have, and are, taking place in the area. Additionally, they established a sanctions committee and a panel of experts to investigate individuals who violate the arms embargo, commit abuses of human rights, or impede the peace process.⁶³¹

In January 2006, African Union diplomats agreed, in principle, to hand over the 7,000 strong AEU mission in Darfur to the United Nations but this met strong resistance from the Sudanese government. The Sudanese government claimed that a UN force would violate its sovereignty, but as it had already has agreed to a UN force of 10,000 troops to monitor the peace agreement ending the 21 year civil war in Southern Sudan, and 7,000 African troops were already present in Darfur, its resistance to a UN force smacked of obstructionism.⁶³² However, its view has prevailed in the short-term, and as a result, the African Union mission was extended for six months until 30 September 2006. At a meeting of the African Union in the Gambia in July 2006, it had been hoped that the Sudan would let 15,000 UN peacekeepers, backed by NATO air support and intelligence, replace the AU's 7,000 troops now in Darfur.⁶³³ The Sudan refused but allowed the AU mission to be extended until 31 December 2006.

NATO, the United States, the Arab League and the European Union

The reaction of the international community has been mixed. Faced with the possible failure of the African Union mission in the first half of 2005, NATO agreed to provide assistance in the form of military planners, and budgetary

⁶³¹ See Human rights Watch at http://www.hrw.org/english/docs/2004/05/05/darfur8536_txt.htm

⁶³² Ibid.

⁶³³ "No End in Sight to Darfur's Misery," *The Economist*, 8 July 2006.

and logistical experts. The United States, which is often crucial in the international community's response to a humanitarian emergency, has been inconsistent in its response. US Secretary of State, Colin Powell was among the first to label the killing in Darfur as genocide and the US has contributed almost \$1 billion in humanitarian aid. At the same time it has protected the intelligence relationship that it has reportedly established with the Sudanese government as part of the war on terrorism.⁶³⁴ In 2006 the US has raised its level of engagement considerably and it is actively involved in the peace talks being conducted in Abuja.

The Arab League has largely been silent on the atrocities in Darfur which is probably due to Sudan being a member of the Arab League and having close relations with a number of other Arab League members. During a meeting of the Arab League in March 2006 it agreed to provide \$150 million in aid to the African Union mission which, in effect, was a victory for the Sudanese government as it prevented the dispatch of UN peacekeepers to the area.⁶³⁵

The European Union states have provided humanitarian assistance in addition to their involvement through NATO. Additionally, they have supported the UN Security Council resolutions but have taken no direct individual action to end the humanitarian emergency in Darfur.

Peace Talks

Following the signing of the ceasefire agreement in 2004, peace talks have taken place in Addis Ababa, Ethiopia and in Abuja, Nigeria under the mediation of the African Union. The latest round of talks chaired by President Olusegun Obasanjo of Nigeria and Denis Sassou Nguesso of the

⁶³⁴ Kevin Croke, *Decision Time on Darfur* (2006). Available from <http://www.ppionline.org/ndol/print.cfm?contentid=253739>. (Accessed 24 April 2006).

⁶³⁵ AKI, "Arab League: Leaders Agreed to Help Fund African Union Peacekeepers in Darfur" Available from <http://www.adnki.com/printPopUp.php?loid=8.0.281651514>

Congo Republic had a deadline of 30 April 2006 for the parties to reach a comprehensive agreement on the three key issues of security, power-sharing and wealth-sharing.⁶³⁶

While these talks have been proceeding, the situation on the border with Darfur and Chad has deteriorated. In late April 2006 the Sudan sponsored a full-scale invasion of Chad, seeking to oust Chad's president and replace him with the warlord who has overseen the murder, rape and pillage in those border areas. At the same time the level of fighting and violence on the ground in Sudan's western Darfur region has been increasing, marked by clashes between various rebel factions and attacks by the Government and pro-government militias.⁶³⁷

Although the deadline of 30 April 2006 was missed, the peace talks continued. On the table was a document drawn up by African Union (AU) mediators after two years of talks on ending the conflict, amended as this dissertation was being completed by a U.S.-led diplomatic team led by US Deputy Secretary of State Robert Zoellick and supported by the UK's International Development Secretary, Hilary Benn who were in Nigeria to try to win rebel acceptance of the deal.

Following pressure from President Olusegun Obasanjo and a request by Kofi Annan to representatives of 18 nations, the European Commission, the Arab League and the African Union to press both sides to reach an agreement, a peace agreement was signed between the Sudanese government and the SLA on 4 May 2006.⁶³⁸ The terms of the agreement included disarming the Arab Janjaweed militia; compensating refugees; transferring some of the government's oil wealth to the region; and enlisting

⁶³⁶ Lydia Polgreen and Joel Brinkley, "Sudan and Largest Rebel Faction Sign Pact to End Carnage," *New York Times*, 4 May 2006.

⁶³⁷ Ibid.

⁶³⁸ Ibid.

thousands of Darfuri rebels into the regular Sudanese army. The two minor rebel groups, the JEM and the minor faction of the SLA (the SLA/AW) did not sign, and although this could provide problems in the implementation of the agreement, it was felt that it was not an overall obstacle to the agreement. It is anticipated that the role of the African Union will continue during the transitional stage and that it will require assistance from the UN and/or NATO to enable it to carry out its peace-keeping role during the transition.

The agreement is promising but the Sudanese government has violated too many agreements in the past to have total confidence that this settlement will last. The Sudanese government signed the Humanitarian Ceasefire Agreement with the rebel groups in April 2004 but continued the killings via the Janjaweed. The difference this time may be the involvement of the United States in the settlement process. As was observed in previous cases analysed in this dissertation, the participation of a major power is often the crucial element in obtaining a successful outcome of an humanitarian intervention.

Conclusion

The humanitarian crisis in Darfur highlights that, regardless of all the assurances since the Rwanda that such a crisis would not be allowed to happen again, the international community still lacks the political will necessary to respond to these crises in a timely way. Notwithstanding the fact that there are institutions and procedures that should enable the international community to respond, the reality in Darfur was that the result was the same as for Rwanda, that is, an agonizingly and tragically slow response.

Consequently, some 300,000 people have died and 2 million have been displaced. Although many of the deaths have been the result of starvation, it is estimated that approximately 70,000 were slaughtered in the first six

months of the emergency.⁶³⁹ As was the case in Rwanda, it is essential that the international community respond to these disasters quickly as the loss of life is likely to be greatest in the early stages of the killing. Whether or not the killing in Darfur was a genocide is open to debate and should not, in any case, be the only basis for deciding to intervene. Certainly the convention on genocide imposes a general duty on states that are signatories to “prevent and to punish” states that commit genocide.⁶⁴⁰ The problem is that the definitions are often considered so narrow that many mass killings may not meet its requirements.⁶⁴¹ Regardless of whether or not the mass killings were genocide, there is little doubt that they were an example of ethnic cleansing.

Under “the responsibility to protect”, states are committed to protecting both their own and, if necessary, other populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁶⁴² As the humanitarian emergency in Darfur unmistakably fell within these categories, the international community should have acted more decisively than it did. The major obstacle to any intervention in Darfur was the government in Khartoum, which had little room to manoeuvre. It was forced to make large concessions including the granting of autonomy to the south Sudan to end the 30 year long civil war. In particular, it feared and continues to fear, a backlash from its powerful military and intelligence agencies, who are opposed to the country’s fragmentation and fear their own possible conviction by the International Criminal Court for the mass killings in Darfur.⁶⁴³

⁶³⁹ Cohen and O'Neill, "Last Stand in Sudan."

⁶⁴⁰ See Convention on Prevention and Punishment of the Crime of Genocide. Available from: <http://www.un.org/millennium/law/iv-1.htm>

⁶⁴¹ See Analysis: Defining Genocide. Available from; <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/...>

⁶⁴² See Chapter 5.

⁶⁴³ "No End in Sight to Darfur's Misery."

As this dissertation was completed, the Sudan Government, to avoid full scale international intervention, is continuing to support the current 7,000 strong AU mission. While the AU mission has nobly tried to enforce the previous ceasefire and current peace settlement, it is hampered by a lack of equipment, money and manpower. As a result, the intervention by the African Union has had a limited effect on the humanitarian disaster. The intervention of Britain and the United States into the peace talks have helped achieve a degree of success, but in the absence of a UN force the killings have continued. It is only if a UN force is accepted, preferably backed by a hegemonic power (NATO has been suggested), that the humanitarian disaster in Darfur is likely to end. Because of a split in the United Nations between the Western nations on the one hand, and China and Russia on the other hand, and the rejection of any UN force by the Sudan, it seems unlikely that such an agreement can be reached, and without it, it is likely that the killings in Darfur will not only continue, but increase.

This places the emerging norm of the “responsibility to protect” in a problematic position. and it cannot be taken for granted that it will automatically be accepted in all circumstances. Although there is general consensus by much of the international community, including the United Nations and the African Union, that action is required in Darfur, determining how this is to be achieved is more difficult particularly as the Sudan continues to reject a UN force.

Zimbabwe: Why Not?

In the proceeding chapters a number of interventions, with varying degrees of success, have been scrutinised. They have occurred in a range of circumstances and have involved a multitude of actors. The common theme in each was the belief that the intervention would alleviate a humanitarian crisis. The State Capacity and the Failed States Indices provide a method whereby states such as Chad, Zimbabwe, Papua New Guinea and Turkmenistan can be classified as fragile or failed. This chapter addresses why a state like Zimbabwe, which appears to be a candidate for intervention, has not been the subject of intervention.

Chapter 1 argued states have a responsibility to provide political goods and services to their citizens, that is, security, health and education, economic opportunity, good governance, law and order, and fundamental infrastructure requirements. Nonetheless, Zimbabwe fails to meet even the bare minimum of these requirements. The State Capacity Index was developed to quantify a state's weakness based on its capacity to meet its responsibility to provide a range of political goods and services to its citizens. The Failed States Index on the other hand, identifies states that fail to meet their responsibility to provide security to its people by evaluating their vulnerability to violent internal conflict. Together they provide an excellent guide to those states that could be subject to intervention by the international community. In both these indices Zimbabwe is ranked in the ten worst states.

Chapter 2 proposed that humanitarian intervention be reconceptualised as a continuum, so that it provided a means to identify a range of options for

intervention, from cooperative, non-military intervention through coercive non-military intervention to forcible military intervention depending on the circumstances of the state. It was felt that this reconceptualisation broke away from the classical definition by offering more nuanced choices for humanitarian intervention by recognising the dichotomy between the forcible and non-forcible elements of the humanitarian debate.

Chapter 4 explored the justifications for humanitarian intervention and argued that there are legal and moral grounds that can validate such actions. Finally, Chapter 5 investigated the emerging norm of “the responsibility to protect” which asserts that if a government fails in its primary responsibility to protect the lives of those living within its jurisdiction from genocide, mass killings, and massive and sustained human rights violations, it forfeits its claim to immunity from intervention.

To determine why some states and not others are the subject of humanitarian intervention, this chapter examines in detail the case of Zimbabwe. Zimbabwe meets the definition of a failed state developed in Chapter 1 but apart from some minor sanctions, has been largely free from intervention by the international community.

A State in Crisis

By any measure Zimbabwe is a state in crisis. It rated 201 on the State Capacity Index and 15 on the Failed State Index in 2005.⁶⁴⁴ Additionally,

⁶⁴⁴ The discussion here relates entirely to definitions and indices of fragile, failing or failed states. The Failed States Index rates states from most vulnerable to conflict in descending order and includes 60 states. The State Capacity Index rates each state’s capacity from strongest to weakest and covers a total of 209 states.

Freedom House included Zimbabwe as one of the 18 most repressive governments in the world.⁶⁴⁵



Map 14. Zimbabwe

Source: United Nations Cartographic Section

Political Rights and Civil Liberties

Zimbabwe gained independence in 1980 and has been ruled since then by President Robert Mugabe. Although stable at independence, civil strife began early and between 1983 and 1987 the government suppressed resistance from the country's largest minority group, the Ndebele. Since then the government of President Mugabe has ensured that Zimbabweans cannot change their government democratically. The 2000 Parliamentary elections were deemed to be fundamentally flawed prior to balloting as the candidates and supporters of the opposition Movement for Democratic Change (MDC)

⁶⁴⁵ *The Worst of the Worst: The World's Most Repressive Societies* Freedom House, 2006. Available from www.freedomhouse.org. (Accessed 28 April 2006).

faced violence and intimidation, including the use of rape as a weapon.⁶⁴⁶ In 2002, Mugabe claimed victory in a deeply flawed presidential election that failed to meet the minimum international standards for legitimacy.⁶⁴⁷

At the latest Parliamentary elections in March 2005 the ruling party won the election which the opposition declared was neither free nor fair. Additionally, Human Rights Watch documented a series of human rights violations including political intimidation of opponents by ruling party supporters, electoral irregularities, and the use of the oppressive legislation by the government. Local civil society organisations, international organisations, including Amnesty International and the International Crisis Group, the international community including the European Union, and the governments of the United Kingdom and the United States widely criticised the election.⁶⁴⁸ However, the African Union, the Southern African Development Community and South African observer teams endorsed the election results. South Africa has been a constant supporter of Zimbabwe, probably largely as a result of a bond between them as both counties fought against white oppression for a number of years.

Over and above the restriction of Zimbabwean's political rights, civil liberties are also very restricted. The freedom of the press is seriously restricted as there are no privately owned radio or television stations, and the state-controlled newspapers and radio and television stations serve as mouthpieces of the government.⁶⁴⁹ The Parliamentary Privileges and Immunities Act has been used to force journalists to reveal their sources, especially when reporting on corruption, before the courts and Parliament.⁶⁵⁰

⁶⁴⁶Ibid.

⁶⁴⁷ Ibid.

⁶⁴⁸ *Country Summary: Zimbabwe* Human Rights Watch, Available from www.hrw.org/english/docs/2006/01/18/zimbab12312.htm. 2006 (Accessed 20 April 2006).

⁶⁴⁹ *The Worst of the Worst: The World's Most Repressive Societies*.

⁶⁵⁰ Ibid.

Journalists are required to be licensed and the system has been used to silence media critics of the government.⁶⁵¹

Although there is a small non-governmental sector with several groups focusing on human rights, they face difficulty in operating due to intimidation and legal harassment. Public demonstrations and protests are essentially illegal under the 2002 Public Order and Security Act which forbids criticism of the President, limits public assembly and allows police to impose arbitrary curfews.⁶⁵² Of great concern is the growing possibility that, although some courts have struck down or disputed government actions, there is increasing pressure by the regime that may soon end the judiciary's capacity to act independently, as the government has repeatedly refused to enforce court orders and has replaced senior judges or pressured them to resign.⁶⁵³ Similarly, the security forces often ignore basic rights regarding search and seizure. Additionally, the government has taken no clear action to halt a rising incidence of torture and mistreatment as suspects held by the security services.⁶⁵⁴

Economic Meltdown

The World Bank has described Zimbabwe's economic situation as "unprecedented for a country not at war" as it is struggling with 70% unemployment, chronic fuel shortages, triple digit inflation and has around 4 million people in need of food aid.⁶⁵⁵ Zimbabwe's GDP is in decline and is half what it was seven years ago. The annual rate of inflation was 1042% in April 2006.⁶⁵⁶ Agricultural production, since the seizure of white-owned

⁶⁵¹ Ibid.

⁶⁵² Ibid.

⁶⁵³ Ibid.

⁶⁵⁴ Ibid.

⁶⁵⁵ Christopher Patton, "The Butcher of Harare," *Wall Street Journal*, 12 October 2005.

⁶⁵⁶ See BBC News. Available from <http://newsvote.bbc.co.uk/mpapps/print/news.bbc.co.uk/2/>

commercial farms, has dropped by 80% and has led to wide-scale food shortages. Other effects of the economic crisis are a lack of petrol and diesel, broken infrastructure including sewerage plants which result in outbreaks of dysentery, and a lack of public transport as most of the country's railway locomotives and buses are not in running order.⁶⁵⁷ Corruption is rampant throughout the country particularly at the highest levels of government. Ruling party and government officials have been allocated extensive properties seized from the white farmers. Transparency International ranked Zimbabwe 107 out of 158 (2.8/10) on their Corruption Perception Index 2005.⁶⁵⁸

These economic conditions have had a deleterious effect on the health system in Zimbabwe with hospitals having difficulty coping with the increasing number of patients suffering from malnutrition. Hospitals are losing skilled staff who are emigrating due to poor wages and a lack of medical equipment. No more AIDS patients are being accepted for treatment because of a shortage of drugs.⁶⁵⁹ A recent World Health Organisation report reported that life expectancy in Zimbabwe is shorter than anywhere else in the world with neither men nor women expected to live until 40 years of age compared with an average life expectancy of 55 in 1980.⁶⁶⁰ Although, part of the decline is due to AIDS, poverty caused by the crumbling economy has also contributed.

⁶⁵⁷ Xan Rice and Jan Raath, "Zimbabwe's Decent into Misery," *The Australian*, 5 December 2005.

⁶⁵⁸ Transparency Corruption Perception Index 2005. Available from: http://www.transparency.org/policy_research/surveys_indices/cpi/2005 (Accessed 31 March 2006)

⁶⁵⁹ Rice and Raath, "Zimbabwe's Decent into Misery."

⁶⁶⁰ See World Health Organization at <http://www.who.int/countries/zwe/en/>

Operation Murambatsvina

Operation Murambatsvina was the Zimbabwean government's program of mass evictions and demolitions of homes and informal business structures, carried out in Zimbabwe's urban areas, which began in May 2005 and, according to the United Nations, it deprived men, women and children of their homes, their livelihoods, or both throughout the country.⁶⁶¹ Police used excessive force to destroy houses and structures and, in some cases, police armed with guns and truncheons, threatened and assaulted people.⁶⁶² It is estimated that around 700,000 people were affected directly and a further 2.4 million people have been involved to a lesser degree. In addition to the loss of homes and livelihoods many were left without access to food, water and sanitation, or health care. Additionally, education to thousands of school age children has been disrupted and many of the sick no longer have access to healthcare.⁶⁶³ Those affected were, by and large, the poor and disadvantaged segments of the population and as a result of Operation Murambatsvina they have been rendered more vulnerable and are deeper in poverty, deprivation and destitution than they were previously. The Zimbabwean government has not investigated reports of excessive use of force by the police or brought any perpetrators to justice.⁶⁶⁴

The UN Secretary-General's Special Envoy, sent to investigate the matter reported that while Operation Murambatsvina ostensibly targeted illegal dwellings and structures and alleged illicit activities, it carried out the operation in an indiscriminate and unjustified manner, with indifference to human suffering and disregard for the provisions of national and

⁶⁶¹ Anna Tibaijuka, "Report on the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina," (New York: United Nations, 2005), 7.

⁶⁶² *Country Summary: Zimbabwe*.

⁶⁶³ Tibaijuka, "Report on the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina," 7.

⁶⁶⁴ *Country Summary: Zimbabwe*.

international legal frameworks.⁶⁶⁵ The government's refusal to cooperate with a United Nations emergency appeal for the hundreds of thousands affected by the evictions worsened their predicament, and it was condemned by the UN Under-Secretary General for Humanitarian Affairs for its lack of cooperation with regard to mitigating the effects of the evictions.⁶⁶⁶ In addition, an estimated 2.9 million people were in need of food aid, but despite the serious food shortages, the government of Zimbabwe refused to make a formal application for food aid from the World Food Programme.⁶⁶⁷

Why No Intervention?

In Chapter 2 a reconceptualisation of humanitarian intervention was put forward based on the reality that intervention is not a single phenomenon but is better understood as a continuum of possible actions by states intending to alter the internal affairs and behaviour of other states. It noted that intervenors may use political, economic or military instruments.

In Zimbabwe the response to these humanitarian abuses has been insignificant. The Europeans have restricted entry into Europe by President Mugabe and 115 of his key henchmen as well as cancelling development aid to Zimbabwe. The US has taken similar steps. Additionally, the international community has responded to the widespread lack of food, by providing food aid from the World Food Programme, despite the non-cooperation of the Zimbabwean government.

The question, therefore, is why, despite the serious abuses of human rights in Zimbabwe, has the international community taken little or no other action. As discussed above there have been serious breaches of political and civil

⁶⁶⁵ Tibaijuka, "Report on the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina."

⁶⁶⁶ *Country Summary: Zimbabwe*

⁶⁶⁷ Tibaijuka, "Report on the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina."

rights with widespread starvation and mass evictions and demolitions of homes and informal business structures. There are three possible explanations for the absence of any further intervention into Zimbabwe.

First, there has been to date, no massacres or ethnic cleansing in Zimbabwe, although certainly, there has been politically motivated deaths and torture. Nevertheless, these most probably number in the hundreds rather than the tens of thousands that have occurred in other places where the international community has intervened. However, there is widespread starvation, which the government has done little to alleviate, and it does raise the possibility that Zimbabwe could embark on a deliberate policy of not just suppressing, but also starving, its own people.⁶⁶⁸ If this were to occur, it is likely that this would change the attitude of the international community towards intervention and increase the likelihood that stronger action would be undertaken.

Second, President Mugabe has the benefit of almost total support from other African states and leaders. Gareth Evans has noted that "South Africa is by far the most influential player and is capable of solving Zimbabwe's crisis".⁶⁶⁹ However, President Thabo Mbeki of South Africa and Mugabe are old friends, largely because Zimbabwe served as a safe haven for the South Africans fighting against the apartheid system in the 1980s. As a result the government in Pretoria provides support and financial assistance to Zimbabwe. The only other state to offer similar financial assistance is China

⁶⁶⁸ Evans, "The Responsibility to Protect and September 11".

Available from; www.crisisgroup.org/home/index.cfm?id=2281&f=1

⁶⁶⁹ Thilo Thielke, *Robert Mugabe's Old Boys' Network* Der Spiegel, 2005. Available from www.service.spiegel.de/cache/international/spiegel/0,1518,druck-3. (Accessed 15 January 2005).

which signed a trade agreement with Zimbabwe in 2005 in return for access to the country's mineral resources.⁶⁷⁰

Support, however, is not limited to that provided by South Africa. The African Union applauded the last parliamentary elections as "free and credible" despite their obvious deficiencies and, following Operation Murambatsvina, it refused to take any action noting that it would not become involved in Zimbabwe's "internal affairs".⁶⁷¹ Additionally, a similar position to the parliamentary elections was taken by the 13 representatives of the Southern African Development Community who observed that the process was credible and reflected the will of the Zimbabwean people.

Finally, the European Union governments and the United States have failed to convince other states, in particular South Africa, to take a stronger stand on Zimbabwe at forums such as the UN Security Council. As previously noted these countries have applied limited sanctions on Zimbabwe but with little impact. Efforts to raise the matter in the UN have been limited, primarily because China and Russia, in particular, do not believe that Zimbabwe warrants further discussions in the Security Council as they maintain that it is not a threat to international peace or security and is, therefore, not a candidate for a Chapter VII intervention.⁶⁷²

It would seem that if there is to be intervention into Zimbabwe it must, in the first instance, come from the African states and institutions. With Robert Mugabe retaining support from the bulk of the African states due to his role in leading Zimbabwe to independence this is unlikely to happen. The balance of the international community is limited in its actions and opposition from Russia and China prevents the United Nations from taking

⁶⁷⁰ Ibid.

⁶⁷¹ Ibid.

⁶⁷² *Country Summary: Zimbabwe.*

an active role. As no extra-regional hegemon is willing to override the stalemate, it appears that no action will occur until the regional hegemon changes its mind and decides that it can no longer support the existing government in Zimbabwe.

Conclusion

The Government of Zimbabwe has failed its responsibility to provide for the security and well-being of their citizens, but despite the imposition of limited sanctions by the European Union and the United States, there has been no other intervention by the international community to prevent the serious abuses of human rights. The Mugabe government mounted a brutal, ill managed campaign against its own citizens with the stated intention to clean up the urban areas, but instead, it has resulted in an humanitarian emergency affecting up to 3 million people.

The Failed States and State Capacity Indices were developed to categorise fragile and failed states and provide an empirical measure to assist decision-makers in determining when humanitarian intervention may need to be considered. Between 2005 and 2006 the position of Zimbabwe on the FSI worsened considerably, as it went from 15th to 5th on the Index. On the latest SCI, Zimbabwe ranked 201 out of 209. Undoubtedly, Zimbabwe has a high vulnerability to violent internal conflict and is unable to provide for the security and well-being of its citizens. Indeed, other states with better records such as the Solomon Islands and East Timor have been the subject of recent humanitarian interventions.

As described, these indices are designed to assist decision-makers and, therefore, there is no exact tipping-point to indicate that the international community must act. That decision remains subjective and will obviously be effected by the politics of individual states. This fact is unmistakably

exhibited in the case of Zimbabwe. Whereas the EU countries and the United States favour some form of intervention into Zimbabwe, it is opposed by the African States, Russia and China. The result is that the humanitarian emergency continues and the international community remains deadlocked.

The “responsibility to protect”, as examined in Chapter 5, specified three obligations for the international community to uphold. The first was the “responsibility to prevent”, by addressing the cause of conflicts and man-made crises before the situation becomes critical. The second was the “responsibility to react” by responding to serious situations including the use of sanctions, international prosecution and in extreme cases, military intervention. The final responsibility was to rebuild, by providing full assistance with the recovery, reconstruction and reconciliation of a state. In Zimbabwe’s situation these responsibilities have not been discharged for the reasons outlined above. This raises a conundrum. The international community accepted the principle of “the responsibility to protect” at the Sixtieth General Assembly Summit of Heads of State in September 2005, but when it is applied to a circumstance such as currently exists in Zimbabwe, many states have not accepted these obligations.

Based on the examples in this chapter, and the examination of previous cases earlier in this dissertation, three factors appear to be critical in determining when the international community intervenes to reduce the humanitarian suffering. First, it is the nature of the state itself. Strong states are far less likely to be subject to intervention than fragile or failing states, as the cost to the intervening state may be high. To a certain extent this was the case with Darfur and the Sudan, where any military intervention by the UN or Western powers was threatened by a military response, and therefore, there was the potential for a high loss of life. Second, if there is not general agreement within the international community, it is highly unlikely that an

intervention will occur. This is exemplified by circumstances in Zimbabwe, although it is possible that if the regional hegemon (South Africa) were to support a move towards intervention it would not only be more probable, but the prospect for success would be greater.⁶⁷³ Finally, based on the case studies carried out in this dissertation, it appears that unless there is a large loss of life in a state that is abusing human rights, there is unlikely to be a forcible response, and the level of sanctions that can be imposed without harming the people who need protection, are relatively limited.

⁶⁷³ See for example the roles played by the US, Britain and Australia into Haiti, Sierra Leone and the Solomon Islands respectively.

Conclusion

*This developing international norm in favour of intervention to protect civilians from wholesale slaughter will no doubt continue to pose profound challenges to the international community. Any such evolution in our understanding of state sovereignty and individual sovereignty will, in some quarters, be met with distrust, scepticism, even hostility. But it is an evolution that we should welcome. Why? Because, despite its limitations and imperfections it is testimony to a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it. It is a hopeful sign at the end of the 20th century.*⁶⁷⁴

Kofi Annan's statement offers support for the proposition that the international community has a responsibility to intervene to prevent humanitarian emergencies in states who are either unwilling or unable to fulfil their responsibility to provide for the security and well-being of their citizens. His position reflects just how far the question of humanitarian intervention has moved to the forefront of international concerns in the 21st century. The 60th General Assembly of the United Nations, which included a Summit of Heads of State in September 2005, endorsed a document that stated "each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity". Member states agreed "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN charter.... on a case-by-case basis and in cooperation with relevant organisations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations...."⁶⁷⁵ The acceptance of "the responsibility to protect" as a legitimate basis for the Security Council to authorise the use of force highlights how norms have clearly changed since

⁶⁷⁴ Kofi A. Annan, 'Two Concepts of Sovereignty', Address to the Fifth Session of the United Nations General Assembly, reprinted in *The Question of Intervention: Statements by the Secretary-General* (United Nations Department of Public Information: New York, 1999), 44.

⁶⁷⁵ "In Larger Freedom: Towards Development, Security and Human Rights for All."

the debates in the UN over India's and Vietnam's use of force in the 1970s, and support Kofi Annan's contention that there is a developing international norm in support of intervention.

This dissertation has assessed the evolution and development of this international norm by the use of five key sub-theses to probe the robustness of the "responsibility to protect" thesis. We revisit these sub-theses to see what they have shown both individually and collectively about the strength of this developing norm.

Identifying Fragile and Failed States

The first sub-thesis asserted that states have a responsibility to provide for the security and well-being of their citizens. Chapter 1 observed that the problem in dealing with fragile or failed states, that may be the subject of intervention, is in defining exactly what and who they are. State failure was defined as the demise of the practical operation of governmental functions for an internationally recognised state, but it recognised that failure need not be reserved for cases of complete state collapse, either into civil war or anarchy, but must also be understood as a process involving the weakening of a state's capacity to provide legitimate governance, that is, the failure to provide essential political goods and services to its citizens. Therefore, there is no specific point of failure so an intervention can occur along a continuum of points which can be identified empirically. States on this continuum can be categorised as strong, fragile or failed.

Two indices were put forward to identify where states are located on this continuum. The first of these indices was the Failed States Index, which identifies states who fail to meet their responsibility to provide security to its citizens, by evaluating their vulnerability to violent internal conflict.⁶⁷⁶ The

⁶⁷⁶ See "The Failed States Index." and Appendix One.

second index, the State Capacity Index, was developed to quantify a state's weakness based on its capacity to meet its responsibility to provide a range of political goods and services to its citizens.⁶⁷⁷

Both the FSI and SCI indices demonstrate that the problem of state failure is serious in the 21st Century, with about 2 billion people living in insecure states with varying degrees of vulnerability to civil conflict. At times identifying the difference between weakness and failure is difficult and it was argued that, a state that meets a very few of its responsibilities to make available political goods and services to its citizens, has failed or is in the process of failing. However, most definitions of state failure envision at least some civil conflict and while the FSI does rank states in order of their vulnerability to conflict, the SCI requires some subjective judgements as to which fragile states are likely to fail and which are just enduringly fragile. Neither index provides exact tipping points to identify when states move from stable to fragile to failed. It is accepted that any final decision by the international community to intervene in a state for humanitarian reasons will involve a range of factors. However, these indices, together with the Instability Framework provide an empirical basis for assessing the requirement for such an intervention.⁶⁷⁸

Comparing states in each index, there were five states in 2005, (Somalia, Iraq, Liberia, Haiti, and the Democratic Republic of the Congo), in the worst ten of each list. The other 10 countries that feature in the worst ten of each list are Cote D'Ivoire, Sierra Leone, Sudan, Chad, Yemen, Afghanistan, Burundi, Myanmar, North Korea and Zimbabwe all of which are clearly fragile or failed states. Several of these states have been, or are the subject of

⁶⁷⁷ See Appendix Two.

⁶⁷⁸ See *Investing in Prevention an International Strategy to Manage Risks of Instability and Improve Crisis Response*.

humanitarian interventions and all are clearly in the risk of total failure without assistance being provided by the international community.

While there will always be a need for subjective judgements when considering humanitarian intervention,⁶⁷⁹ the Failed States Index and the State Capacity Index can be of assistance in identifying the severity of state failure. Furthermore, they reveal that this severity ranges over a continuum which suggests that humanitarian intervention also needs to occur along a corresponding continuum.

Reconceptualising Humanitarian Intervention

Based on the range of factors that can be used to identify state failure, Chapter 2 proposed a reconceptualisation of the classical definition of humanitarian intervention to provide for a range of options, from co-operative, non-military intervention through coercive non-military intervention to forcible military intervention depending on the circumstances of the state. It contended that such a reconceptualisation would highlight the dichotomy between the forcible and non-forcible elements of the debate and break away from the all-or-nothing approach of the classical definition, thereby allowing for more nuanced choices of humanitarian interventions. Thus it is practical to look at a range of options for redressing state incapacity at various levels of failure.

Several elements of this reconceptualisation can be identified in the case studies in Part Two of this dissertation. Whereas, the majority of the interventions discussed were traditional in that they involved the use of military force, there are examples of other options being undertaken successfully. In Haiti in the early 1990s, the use of economic sanctions represented a non-coercive, non-military humanitarian intervention, but

⁶⁷⁹ See *Ibid.* which provides a method of assessing individual states in more detail.

when this proved unsuccessful, there was a threat of a coercive military intervention. However, in the end, all that was necessary was this threat of coercive military intervention, and eventually a non-coercive military intervention (that is, Chapter VI peacekeeping) was all that was necessary. The situation in 2004 was completely different, in that the interim president requested assistance and authorised international troops to enter Haiti. The resulting Multinational Interim Force was established by a Security Council resolution. It epitomises a non-coercive military intervention.

The interventions into both East Timor and the Solomon Islands also involved the use of non-coercive military intervention. East Timor's case was slightly different as, at the time of the intervention, it was a province of Indonesia, whose President granted permission for a United Nations mission to the island to both re-establish order and to oversee a move towards independence. The UN involvement was critical as Australia, who led the original UN mission, stated that it would not intervene without the authorisation and involvement of the United Nations.

In the Solomon Islands, the request for intervention was made direct to Australia by Prime Minister Sir Alan Kemakeza. The Australian government decided that it would intervene to assist the Solomon Islands, but subject to the support of both the Solomon Islands authorities and the Pacific Islands Forum. Once the Forum foreign ministers endorsed the proposed plan, the Solomon Islands formally requested assistance to restore law and order, security and economic sustainability and passed enabling legislation setting out the powers and immunities of the personnel engaged in the operation.

These cases reveal that there is not necessarily a single method of humanitarian intervention. Whereas, in the majority of cases humanitarian intervention is likely to involve coercive military force, this thesis has

demonstrated that the international community has increasingly successfully applied a broader range of options to assist states in need of humanitarian support.

Fundamental to any humanitarian intervention is the process of state-building. As identified in Chapter 2, state-building is a complex and multifaceted process. There are at least four requirements for successful state-building. The first is security, both internal and external, which should deal with all aspects of public safety, and in particular the creation of a secure environment and the development of legitimate and effective security institutions. The second is governance, that is, the creation of legitimate and effective political and administrative institutions and participatory processes. The third is the development of a justice system which would be impartial and accountable, with an effective law enforcement apparatus, and open judicial system, fair laws, and a humane corrections system. The final requirement is the development of economic and social institutions that provide the basis for a viable economy and a sustainable development program, and the provision of essential services to the population in areas such as health and education. Given that the type of humanitarian intervention reviewed in this dissertation has dealt with state failure, it is not likely to be successful if it does not also address the need for state-building.

State-building has been part of humanitarian interventions in a range of countries such as Sierra Leone, Haiti, East Timor, the Solomon Islands and the Democratic Republic of the Congo. The success of these efforts has been mixed. In Sierra Leone, a not inconsiderable endeavour was put into retraining and rebuilding the police and the national army, together with a range of public institutions such as utilities, roads, telecommunications, local authorities, and educational and health services. With help from Britain, UNAMSIL was recognised as a model for peacekeeping for the

reconstruction of police, army and public institutions ruined by years of war. Although Sierra Leone faces many challenges the state-building efforts can be considered successful to the extent that the United Nations Mission in Sierra Leone was finalised at the end of December 2005.

In Haiti, following the first intervention in 1993 little attention was paid to state-building except for an effort to improve security through the development of the police force. As a result, a further intervention by the international community was required in 2004, the result of which was a pact, developed to set out measures to be undertaken during the transitional period, in the areas of security, development, the fight against corruption, decentralisation, elections, judicial reform, a new social contract, the institutional strengthening of political parties and civil society organisations, and the reintegration of former armed elements and the professionalisation of the Haitian national police. By June 2006, presidential and parliamentary elections had been held and Haiti began to resemble a real democracy. To ensure continual progress Haiti has requested a fresh UN mandate focusing on social, economic and political reform and the long-term prospects for Haiti are better than they have been for a long time thanks to the state-building efforts.

East Timor and the Solomon Islands reaffirm that state-building is a long-term process. After encouraging beginnings both states have suffered serious outbreaks of violence and rioting in 2006. This has highlighted the difficulties of state-building and the necessity of establishing sound political and security institutions that can withstand tensions between different ethnic groups.

The Democratic Republic of Congo illustrates the difficulties of state-building in a failed state when peace and security cannot be firmly established. The

continued interference into the Congo by neighbouring states and/or militias has hampered UN efforts to establish peace and security throughout the country. As a result, the restructuring of the security institutions has been restricted and there has been little progress in rebuilding the other institutions of a state. Elections due in June 2006 have been delayed. The European Union has recently contributed 2,000 troops to assist in the development of the political process, and it is hoped that successful elections will assist in state-building efforts.

Responsible Sovereignty

The third sub-thesis developed the theme that the concept of sovereignty in the 21st century is better conceptualised as a variable, based on the capacity of a state to meet its responsibilities and exercise its authority, both internally and externally. Chapter 3 contended that the norms of sovereignty, established over three hundred years following the Peace of Westphalia and codified in the United Nations Charter in 1948, have been challenged in two major ways. First, the rapid expansion in the number of states in the world following decolonisation, provoked challenges to this conception of sovereignty, as many of the newly-created states lacked the capacity to support themselves without external assistance, or to contribute in any meaningful manner to the international community but, nevertheless, were legally recognised. Second, the balance between states and people as the source of legitimacy and authority was challenged by the principle of the two concepts of sovereignty which argues that states are instruments at the service of their peoples, and not vice versa. This conception of sovereignty maintains that international law operates to meet the needs of citizens, not their governments. The legal rules and processes should be interpreted in the light of human values, not state values.

The concept of responsible sovereignty proposed in this dissertation, recognised the duality of sovereignty, where there is an internal dimension based on the state and its relationship with its citizens, and an external dimension that administers the relationship among states. The Responsible Sovereignty Matrix developed in Chapter 3 had both a judicial (*de jure*) component (which could be considered the ideal type) and an empirical (*de facto*) component (which reflects the harsh Westphalian realities of the real world), to both the internal and external dimensions of sovereignty.

In Chapter 11, the Democratic Republic of the Congo reveals how state failure and international intervention impact directly on the sovereign status of a country. Evaluated against the Responsible Sovereignty Matrix, it is evident that the Democratic Republic of the Congo's sovereignty has been seriously compromised since the exodus of refugees arrived from Rwanda in 1994. Externally, its sovereignty is recognised under international law but has been compromised judicially by the presence of UN peacekeepers and empirically by the actions of its neighbours in either by taking action directly within the Congo, or supporting local militias. Internally, the central government fails to fulfil its judicial requirements under international humanitarian law, and empirically it is unable to project its authority to all parts of the country. This analysis of the country's sovereignty is made possible by using the Responsible Sovereignty Matrix, which enables both the traditional Westphalian norms and current international law to be taken into account when considering humanitarian intervention.

Justifying Humanitarian Interventions

That humanitarian intervention in the 21st century can be justified both legally and morally in cases of humanitarian emergencies was the basis of the fourth sub-thesis as developed in Chapter 4. The Charter of United Nations is the principal convention governing the legality of intervention

and it is generally accepted that authorisation under Chapter VII of the Charter is required for an intervention to be considered legal. However, it also noted that there is a growing body of opinion that a new international customary norm of humanitarian intervention has been created as a result of state practice. This norm is not just located in the legality of the intervention but also in its morality.

Morally, three justifications for humanitarian intervention were claimed. First, Natural Law, which when separated from its religious connotations can be seen as common morality, which reflects values such as those defined by the United Nations Declaration of Human Rights. Second, the Just War tradition, particularly as put forward by the ISCSS and the UN in its report, *In Larger Freedom*. These modified approaches to the Just War tradition provide a method to justify humanitarian interventions and are central to the developing norm of “the responsibility to protect”, as endorsed by a Summit of Heads of State at the Sixtieth General Assembly of the United Nations in September 2005 and in Security Council resolution 1674 (28 April 2006). Finally, it is maintained that even if an intervention did not meet these legal and moral justifications, it could be considered legitimate, if the human rights norms that have been developed over the last fifty years are recognised. It is contended that the legitimacy of an intervention is best evaluated by adopting the solidarist theory of Legitimate Humanitarian Intervention as outlined in Chapter 5. This variation of the Just War tradition relies on four criteria: just cause, last resort, a proportional use of force, and a high probability of obtaining a positive humanitarian outcome.

The interventions into Somalia, Rwanda, Srebrenica, Sierra Leone, Haiti, East Timor and the Democratic Republic of the Congo were all authorised under either Chapter VI or VII of the UN Charter. Additionally, the intervention into the Solomon Islands, although not UN-authorised, was requested by the

government of the Solomon Islands, who passed enabling legislation setting out the powers and immunities of the personnel engaged in the operation. In Darfur, the African Union authorised the original intervention under its Charter and this was subsequently endorsed by the United Nations in 2004. Therefore, there is no debate that all these interventions were legal under international law and the question of justification is not arise.

However, in a few interventions the legal position is not so clear-cut. Of particular interest are the interventions of India, Vietnam and Tanzania into Pakistan, Cambodia and Uganda respectively in the 1970s. As this was during the height of the Cold War international politics were strongly based on the rules of sovereignty, non-intervention and non-use of force. Additionally, international politics were, to a large extent shaped by the great powers, namely the United States, the Sovereign Union and China. Of these three cases only India originally claimed a humanitarian intent, but ceased doing so when it became obvious that this would not be accepted by the Security Council. However, when judged under the criteria of the solidarist theory of Legitimate Humanitarian Intervention, it is possible to claim that these were in fact humanitarian, although not recognised as such at the time.

A similar situation applies to the NATO intervention into Kosovo in 1999. This event was to have particular significance as it was the first time since the founding of the United Nations that a forcible intervention into another state had been justified on humanitarian grounds, and carried out without the authorisation of the UN Security Council. As the UN Charter prohibits the use or threat of armed force against another state, except in self-defence or in execution of collected measures authorised by the Council or the Assembly, there is little doubt that NATO's intervention into Kosovo was unlawful.

However, the Independent International Commission on Kosovo came to the conclusion that, although the NATO campaign was illegal, it was legitimate. This conclusion was derived at by maintaining that humanitarian intervention may not be inconsistent with the UN Charter, if it reflects the spirit of the charter as it relates to the overall protection of people against human rights abuses. Additionally, when this intervention is measured against the Solidarist Theory of Legitimate Humanitarian Intervention, it is manifest that this intervention met those provisions and, therefore, could be considered legitimate.

In summary, ideally any attempt at humanitarian intervention should be able to meet the requirement of the emerging norm of “the responsibility to protect”. This requires that the intervention meet the modified Just War criterion as laid out in the UN report, *In Larger Freedom*, which includes authorisation by the United Nations. However, it is apparent that in certain circumstances humanitarian intervention may still be considered legitimate even when it fails this requirement. Judged against the solidarist theory of Legitimate Humanitarian Intervention there is a strong case that interventions that meet all the conditions except for UN authorisation, can still be justified on moral grounds and, therefore, may be considered legitimate (if only retrospectively).

The Role of the International Community

The final sub-thesis advanced the contention that humanitarian interventions have a greater probability for success when a range of actors are involved in the intervention. The greater the range of participants and resources behind the intervention the more likely it is to be able to meet the various challenges of state failure. Chapter 2 probed the role of the international community in humanitarian interventions. While the United Nations has strengths in deciding on multinational interventions and is the obvious body to represent

the international community, it needs to be recognised that there are limits to the UN's operational role. Traditionally, it has had limited rules of engagement, patched together military forces often from less-developed countries, with obsolete equipment, inadequate logistical infrastructure, and other limited military capabilities that are often proven inadequate in situations that require forceful intervention. Regional organisations, alliances, or coalitions are often better able to perform the tasks of forcible intervention than a UN assembled force from other parts of the world. This has been reflected in recent times by regional organisations such as NATO (Kosovo), the Economic Council of West African States (Sierra Leone and Liberia), Pacific Islands Forum (Solomon Islands) and the Organisation of American States (Haiti), who are closer to the problem and more likely to be affected by disruptions in a neighbouring country. Hegemonic powers are often essential to the ultimate success of an intervention as they can bring political commitment, greater resources, and technical expertise that are often lacking in the other participants.

The Responsibility to Protect: An Emerging Norm?

This dissertation began by observing that there was a growing international consensus that never again should the international community stand by in the face of gross breaches of human rights, as occurred in Somalia, Rwanda and Srebrenica in the 1990s. It observed that despite the current inadequate response to the humanitarian emergency in Darfur, the international community is actively seeking solutions to the dilemma of humanitarian intervention and its relationship to the doctrine of non-intervention into sovereign states.

The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty has noticeably changed the debate about

humanitarian intervention in the 21st century.⁶⁸⁰ Rather than being a debate about whether the international community has a right to intervene, the debate is now about the responsibilities of both individual states and the international community in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. Further, the “responsibility to protect” as expounded by the Commission was not just about military intervention. It also included the responsibility to prevent, the responsibility to react, and the responsibility to rebuild.

The major propositions that have been developed in this dissertation work to sustain the thesis that the international community does indeed have a responsibility to intervene to prevent humanitarian emergencies in states who are either unwilling or unable to fulfil their responsibilities to provide for the security and well-being of their citizens. The logic and evidence linking each of these substantial propositions strongly support the case for a new emerging international norm.

First, there is ample evidence that the state system is moving to accept the principle that states have a responsibility to provide a range of political goods and services to their citizens, specifically, security, health and education, economic opportunity, good governance, law and order, and fundamental infrastructure requirements. Secondly, the concept of sovereignty has evolved to establish a connection between the two components of sovereignty: internally, to respect the basic rights of all citizens within the state, and externally, to respect the sovereignty of other states. As a result, responsible sovereignty must be seen as a variable that

⁶⁸⁰ See "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty." and "The Responsibility to Protect: Research, Bibliography, Background, Supplementary Volume to Report of the International Commission on Intervention and State Sovereignty."

entails the capacity of the state to meet its responsibilities and exercise its authority, both internally and externally.

Thirdly, there is evidence that humanitarian intervention is undergoing an adaptive process and has provided for a range of intervention options, ranging from cooperative, non-military intervention through coercive non-military intervention to forcible military intervention depending on the circumstances of the state. Finally, slowly and uncertainly there is even support for the idea that legal processes alone may not determine the legitimacy of humanitarian intervention in the 21st century. Increasingly, moral considerations can also be a determinate in the international community deciding to intervene.

While acknowledging that pluralist international society is suspicious of humanitarian intervention because it considers that it can be subversive of order, this dissertation generally finds for a solidarist approach. The threat to order is exaggerated, as ideally, humanitarian intervention will operate with UN authorisation or, if this is not possible, that it will satisfy threshold tests of legitimacy. In this way it strengthens the legitimacy of international society by increasing its commitment to justice. The tension between order and justice remains, but whereas in the 20th century the priority was order, in the 21st century the pursuit of justice, whilst still secondary, is challenging the international community to find new ways of achieving justice for all. The most significant development in this respect, is the emerging norm of “the responsibility to protect”.

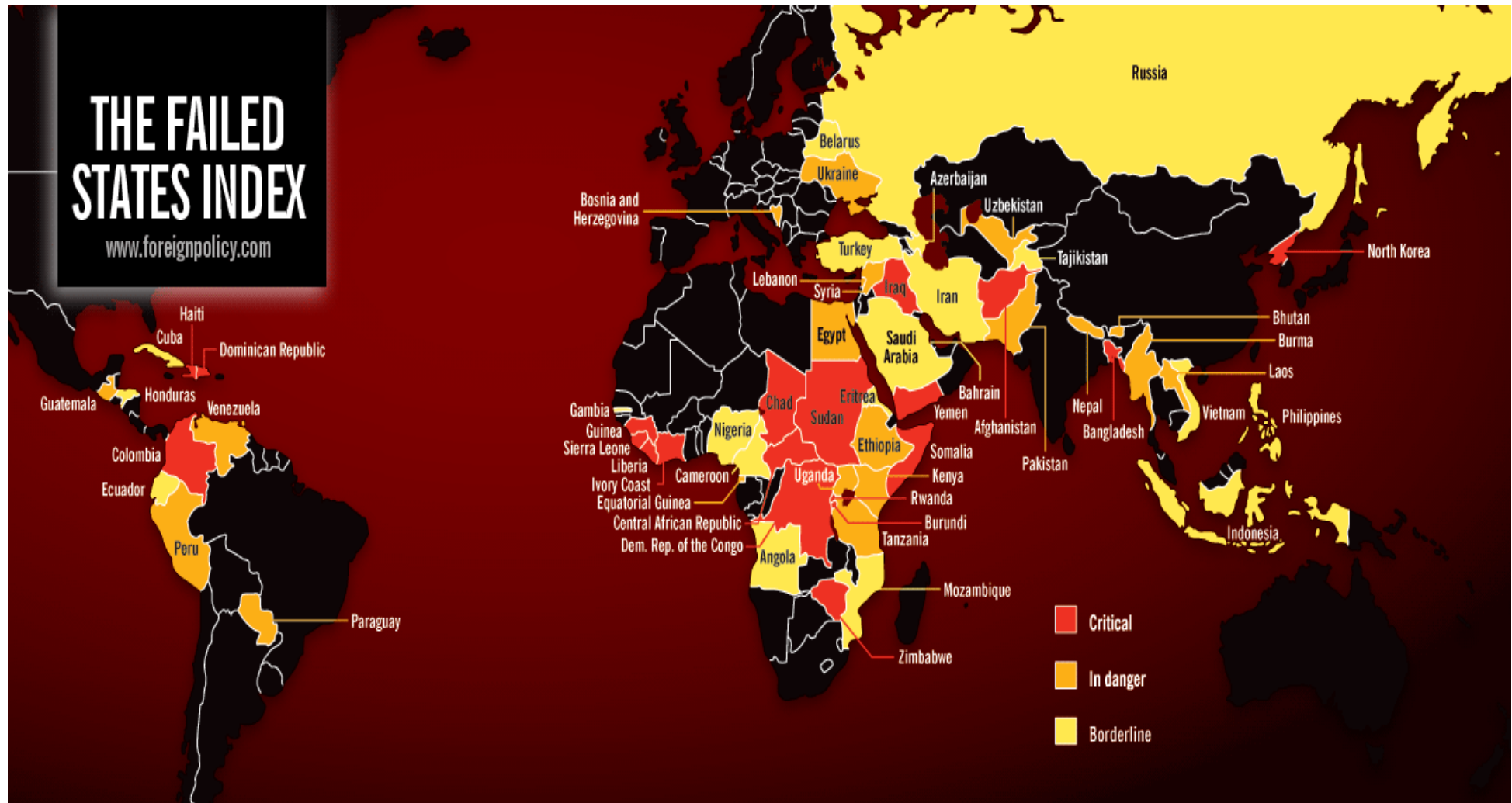
Appendix One

The Failed States Index

The Failed States Index-2005

The Failed States Index www.foreignpolicy.com			Indicators of Instability											
			Demographic Pressures	Refugees and Displaced Persons	Group Grievance	Human Flight	Uneven Development	Economic Decline	Delegitimization of State	Public Services	Human Rights	Security Apparatus	Factionalized Elites	External Intervention
Rank	Total	Country	8.0	8.0	7.7	8.8	9.0	7.7	9.8	9.5	9.4	9.0	9.1	10.0
2	105.3	Dem. Rep. of the Congo	9.0	9.4	9.0	7.0	9.0	8.0	8.0	9.0	9.1	8.7	9.1	10.0
3	104.1	Sudan	8.6	9.4	7.8	9.1	9.0	8.5	9.2	8.7	8.0	9.8	8.7	7.3
4	103.2	Iraq	8.0	9.4	8.3	6.3	8.7	8.2	8.8	8.9	8.2	8.4	10.0	10.0
5	102.3	Somalia	9.0	8.0	7.4	6.3	9.0	8.3	9.8	10.0	7.8	10.0	8.7	8.0
6	102.1	Sierra Leone	9.0	8.0	7.5	8.9	8.7	10.0	7.5	9.1	8.7	6.3	8.6	9.8
7	100.9	Chad	8.0	9.1	7.1	8.3	9.0	8.0	8.9	9.0	9.1	7.0	9.4	8.0
8	99.7	Yemen	7.8	8.0	6.4	8.2	9.0	8.8	9.8	9.3	6.4	9.0	9.4	7.6
9	99.5	Liberia	9.0	7.8	7.3	8.1	9.0	10.0	7.5	8.2	8.2	6.5	7.9	10.0
10	99.2	Haiti	8.8	8.0	7.7	3.4	9.0	8.1	9.4	9.8	8.7	7.8	8.5	10.0
11	99.0	Afghanistan	9.0	8.0	8.0	7.4	8.8	7.5	8.1	8.1	7.9	8.2	8.0	10.0
12	96.5	Rwanda	9.0	7.8	8.0	8.6	9.0	9.2	9.5	5.0	8.3	5.0	8.9	8.2
13	95.7	North Korea	8.0	6.0	7.2	8.1	9.0	9.6	9.8	9.7	9.0	8.3	8.0	3.0
14	95.0	Colombia	9.0	8.0	6.9	9.2	9.0	7.1	9.8	4.2	8.2	5.4	9.2	9.0
15	94.9	Zimbabwe	9.0	8.0	6.4	7.7	9.0	7.3	7.9	8.5	7.5	9.0	7.9	6.7
16	94.7	Guinea	9.0	6.0	6.1	10.0	9.0	4.5	9.7	7.5	8.1	8.1	9.2	7.5
17	94.3	Bangladesh	8.4	7.0	7.6	6.0	9.0	7.4	9.5	8.2	8.5	8.0	8.7	6.0
17	94.3	Burundi	9.0	7.2	7.1	3.8	8.8	7.8	7.2	9.0	8.3	7.5	8.6	10.0
19	94.2	Dominican Republic	9.0	8.0	7.1	8.5	9.0	6.8	6.8	9.6	9.2	7.0	9.2	4.0
20	93.7	Central African Republic	9.0	5.0	8.8	3.0	7.0	9.0	9.7	8.0	8.2	9.0	10.0	7.0
21	93.5	Bosnia and Herzegovina	7.0	8.0	8.6	5.7	9.0	5.7	8.5	6.0	7.3	9.0	8.7	10.0
21	93.5	Venezuela	8.0	8.0	6.8	7.6	9.0	4.5	9.8	8.2	9.1	7.8	7.2	7.5
23	93.4	Burma	8.9	8.0	6.3	8.0	9.0	6.9	9.2	8.0	9.6	9.0	7.5	3.0
24	93.2	Uzbekistan	6.5	8.0	6.8	6.8	9.0	6.0	9.1	5.0	9.6	9.0	9.4	8.0
25	92.7	Kenya	9.0	8.0	6.7	8.3	8.8	6.3	8.9	7.4	8.5	8.4	8.4	4.0
26	92.0	Bhutan	8.0	8.0	5.5	8.0	9.0	8.0	9.8	5.0	8.0	6.0	10.0	6.7
27	91.7	Uganda	9.0	7.6	6.9	5.7	8.4	6.0	8.0	8.4	8.3	8.0	8.1	7.3
28	91.5	Laos	9.0	6.7	6.3	8.8	9.0	6.5	7.9	2.5	9.4	9.0	9.7	6.7
28	91.5	Syria	9.0	8.0	7.5	6.8	9.0	5.0	9.0	5.0	7.6	9.0	8.2	7.4
30	91.1	Ethiopia	8.7	8.0	6.0	7.3	9.0	8.5	7.9	5.5	6.3	9.0	8.9	6.0
31	91.0	Guatemala	9.0	6.0	7.4	7.5	9.0	7.7	9.5	5.0	8.7	8.1	9.1	4.0
31	91.0	Tanzania	9.0	7.2	7.6	6.7	8.9	4.5	8.2	7.8	8.6	7.9	7.5	7.1
33	90.9	Equatorial Guinea	8.0	6.0	6.3	9.0	9.0	5.1	9.9	8.0	7.8	7.0	9.8	5.0
34	89.4	Pakistan	5.0	5.0	6.9	8.0	9.0	3.3	9.8	7.5	8.1	9.0	9.3	8.5
35	89.0	Nepal	9.0	8.0	5.6	4.0	9.0	7.1	8.9	6.0	9.1	7.6	8.0	6.7
36	88.9	Paraguay	4.0	5.0	6.9	8.3	9.0	7.8	9.9	7.0	8.3	8.0	8.7	6.0
36	88.9	Lebanon	8.0	8.0	7.5	7.1	7.0	4.7	8.7	4.3	7.3	8.1	9.2	9.0
38	88.8	Egypt	9.0	8.0	7.8	5.0	9.0	3.8	9.5	7.3	7.7	8.5	8.2	5.0
38	88.8	Ukraine	9.0	7.0	6.9	8.8	9.0	7.3	8.9	5.5	8.5	2.0	9.1	6.8
40	88.1	Peru	6.0	7.0	6.6	9.0	8.5	5.0	9.6	4.4	7.1	9.0	8.9	7.0
41	87.6	Honduras	9.0	6.0	5.3	9.7	9.0	5.4	9.9	3.0	7.2	8.0	9.1	6.0
42	87.5	Mozambique	9.0	8.0	5.7	9.0	8.8	7.8	8.1	6.7	7.4	3.8	8.2	5.0
43	87.3	Angola	7.9	8.6	6.3	3.8	9.0	4.4	7.9	7.2	8.3	7.0	8.1	8.8
43	87.3	Belarus	9.0	8.0	7.0	2.4	9.0	5.4	8.5	7.0	7.3	6.8	9.4	7.5
45	87.1	Saudi Arabia	7.6	6.3	7.8	8.8	9.0	2.2	9.8	4.3	8.6	9.0	8.3	5.4
46	87.0	Ecuador	9.0	6.0	5.6	6.9	9.0	5.0	9.5	7.5	7.9	8.0	8.6	4.0
46	87.0	Indonesia	8.6	7.0	6.3	8.9	9.0	4.0	9.2	4.0	8.6	7.6	8.8	5.0
48	86.7	Tajikistan	9.0	5.0	6.2	6.7	9.0	5.3	8.6	5.0	9.4	8.0	9.5	5.0
49	86.1	Turkey	9.0	8.0	7.3	5.0	9.0	4.2	9.7	4.8	5.0	8.0	9.1	7.0
50	85.7	Azerbaijan	8.0	6.0	6.0	5.8	9.0	4.1	9.7	5.0	8.5	7.0	9.6	7.0
51	85.6	Bahrain	6.0	5.0	6.7	9.0	9.0	1.7	9.7	4.0	8.4	9.0	9.6	7.5
52	84.9	Vietnam	8.6	8.0	5.6	8.5	8.9	3.4	7.6	4.3	8.4	8.0	6.4	7.2
53	84.6	Cameroon	9.0	7.0	5.1	8.6	9.0	4.2	6.4	7.5	6.6	8.0	8.2	5.0
54	84.3	Nigeria	7.2	3.0	6.5	8.7	8.9	5.8	8.8	6.9	6.7	9.0	8.3	4.5
55	84.1	Eritrea	8.0	8.0	5.4	4.0	9.0	8.8	9.0	7.0	5.7	5.0	9.2	5.0
56	83.9	Philippines	7.0	7.0	6.5	8.2	9.0	4.7	9.3	3.8	8.2	7.0	9.2	4.0
57	83.8	Iran	5.0	8.0	7.3	6.0	9.0	3.3	9.1	4.8	8.8	7.3	9.1	6.1
58	83.7	Cuba	5.0	8.0	6.3	5.4	8.8	5.7	7.8	3.8	9.0	9.0	8.6	6.3
59	83.5	Russia	9.0	6.0	7.5	2.3	9.0	3.8	9.4	6.7	9.0	7.6	9.2	4.0
60	82.4	Gambia	7.0	7.0	5.4	4.0	9.0	6.7	8.1	7.0	7.9	6.0	8.3	6.0

Source: The Fund for Peace and Foreign Policy Magazine, July/August 2005.



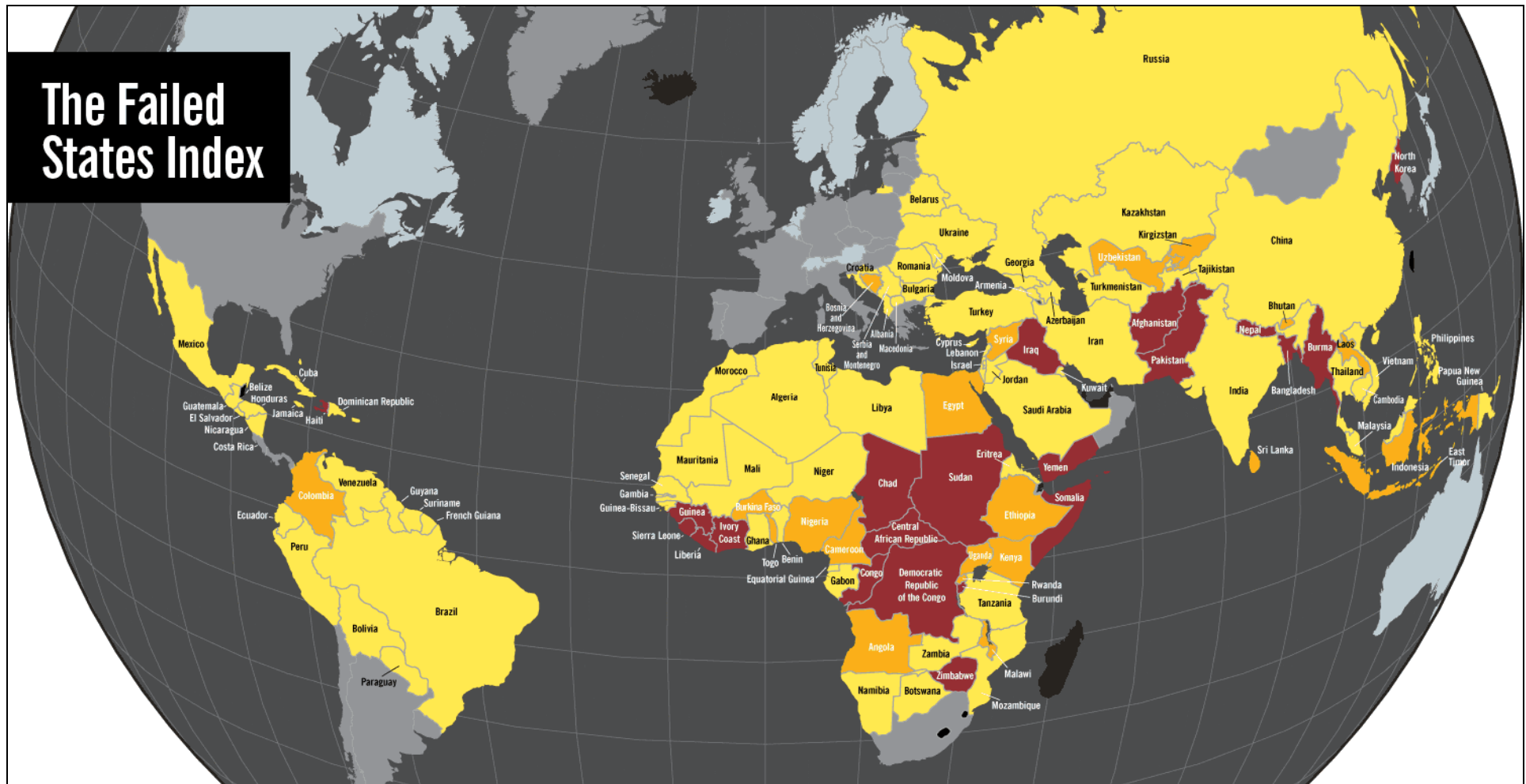
Map 15. The Failed States Index 2005

Source: The Fund for Peace and Foreign Policy Magazine, July/August 2005

The Failed States Index-2006

The Failed States Index Rankings			Indicators of Instability											
			Demographic Pressures	Refugees and Displaced Persons	Group Grievance	Human Flight	Uneven Development	Economy	Delegitimization of State	Public Services	Human Rights	Security Apparatus	Factionalized Elites	External Intervention
Rank	Total	Country												
1	112.3	Sudan	9.6	9.7	9.7	9.1	9.2	7.5	9.5	9.5	9.8	9.8	9.1	9.8
2	110.1	Dem. Rep. of the Congo	9.5	9.5	9.1	8.0	9.0	8.1	9.0	9.0	9.5	9.8	9.6	10.0
3	109.2	Ivory Coast	8.8	7.6	9.8	8.5	8.0	9.0	10.0	8.5	9.4	9.8	9.8	10.0
4	109.0	Iraq	8.9	8.3	9.8	9.1	8.7	8.2	8.5	8.3	9.7	9.8	9.7	10.0
5	108.9	Zimbabwe	9.7	8.9	8.5	9.0	9.2	9.8	8.9	9.5	9.5	9.4	8.5	8.0
6	105.9	Chad	9.0	9.0	8.5	8.0	9.0	7.9	9.5	9.0	9.1	9.4	9.5	8.0
6	105.9	Somalia	9.0	8.1	8.0	7.0	7.5	8.5	10.0	10.0	9.5	10.0	9.8	8.5
8	104.6	Haiti	8.8	5.0	8.8	8.0	8.3	8.4	9.4	9.3	9.6	9.4	9.6	10.0
9	103.1	Pakistan	9.3	9.3	8.6	8.1	8.9	7.0	8.5	7.5	8.5	9.1	9.1	9.2
10	99.8	Afghanistan	7.9	9.6	9.1	7.0	8.0	7.5	8.3	8.0	8.2	8.2	8.0	10.0
11	99.0	Guinea	7.5	7.2	8.1	8.4	8.0	8.0	9.1	9.0	8.1	8.1	9.0	8.5
11	99.0	Liberia	8.0	9.3	7.0	7.1	8.6	8.9	7.8	9.0	7.2	7.3	8.8	10.0
13	97.5	Central African Republic	9.0	7.7	8.8	5.5	8.5	8.1	9.0	8.0	7.5	8.9	8.0	8.5
14	97.3	North Korea	8.0	6.0	7.2	5.0	9.0	9.5	9.8	9.5	9.5	8.3	8.0	7.5
15	96.7	Burundi	9.0	9.1	7.0	6.7	8.8	7.8	7.2	8.5	7.5	7.3	7.8	10.0
16	96.6	Yemen	7.8	6.7	7.0	8.2	9.0	7.8	8.8	8.2	7.2	9.0	9.4	7.5
16	96.6	Sierra Leone	8.5	7.9	7.1	8.9	8.7	9.0	8.0	8.0	7.0	7.0	7.7	8.8
18	96.5	Burma	8.9	8.8	9.0	6.0	9.0	7.1	9.2	8.2	9.8	9.0	8.0	3.5
19	96.3	Bangladesh	9.0	5.8	9.5	8.5	9.0	7.0	9.0	7.5	7.8	8.3	8.9	6.0
20	95.4	Nepal	8.5	4.8	9.2	6.0	9.2	8.5	9.2	6.2	9.1	9.0	9.0	6.7
21	94.5	Uganda	8.0	9.2	7.8	5.7	8.4	7.5	8.0	8.0	8.0	8.5	7.9	7.5
22	94.4	Nigeria	8.0	5.9	9.1	8.5	9.0	5.4	9.0	8.3	7.1	9.2	9.0	5.9
22	94.4	Uzbekistan	7.7	5.8	7.5	7.5	8.1	7.0	9.3	7.0	9.3	9.1	9.1	7.0
24	92.9	Rwanda	9.5	7.0	9.0	8.2	7.2	8.0	8.7	6.9	7.7	5.0	8.9	6.8
25	92.4	Sri Lanka	8.0	8.2	9.1	6.7	8.0	5.7	8.6	7.0	7.2	8.5	8.9	6.5
26	91.9	Ethiopia	9.0	7.6	7.0	7.5	8.5	8.0	7.6	6.2	8.0	7.5	8.7	6.3
27	91.8	Colombia	7.0	9.1	7.4	8.5	8.5	3.2	8.7	6.5	7.6	9.0	9.2	7.1
28	90.3	Kirgizstan	8.0	6.6	7.0	7.5	8.0	7.5	8.3	7.3	7.9	8.3	7.9	6.0
29	89.8	Malawi	9.0	6.0	6.0	7.0	8.8	8.8	8.0	9.0	8.0	5.5	6.7	7.0
30	89.7	Burkina Faso	9.0	5.9	6.5	6.6	8.8	8.2	7.8	8.4	6.5	7.6	7.7	6.7
31	89.5	Egypt	8.0	6.0	8.5	6.0	8.0	7.0	9.0	7.3	8.0	6.5	7.7	7.5
32	89.2	Indonesia	7.5	8.2	6.3	8.3	8.0	6.8	6.7	7.2	7.5	7.5	7.9	7.3
33	88.6	Syria	7.0	7.1	8.0	6.8	8.9	6.5	9.0	5.5	9.0	7.5	7.1	6.2
33	88.6	Kenya	9.0	7.1	6.7	8.0	8.0	6.8	7.3	7.2	6.9	7.0	7.6	7.0
35	88.5	Bosnia and Herzegovina	6.5	8.5	8.6	6.0	7.3	6.2	8.1	5.8	5.3	7.5	8.7	10.0
36	88.4	Cameroon	6.5	6.8	6.5	8.0	8.7	6.0	8.5	8.0	7.2	7.6	7.9	6.7
37	88.3	Angola	8.0	8.5	6.3	5.0	9.0	4.9	8.8	7.6	7.8	6.8	8.0	7.6
37	88.3	Togo	7.0	5.8	6.0	6.5	7.5	8.0	8.7	8.1	8.1	8.1	7.8	6.7
39	87.9	Bhutan	6.0	8.1	7.0	6.7	9.0	8.0	8.4	6.0	8.6	5.0	8.4	6.7
39	87.9	Laos	8.0	5.9	6.3	6.6	5.9	6.5	7.9	8.0	8.2	9.0	8.9	6.7
41	87.8	Mauritania	9.0	5.9	8.5	5.0	7.0	7.8	7.1	8.2	7.1	7.6	7.9	6.7
42	87.7	Tajikistan	7.0	6.6	6.2	6.5	7.4	6.8	8.9	7.5	8.6	7.5	8.7	6.0
43	87.1	Russia	8.0	7.2	8.0	7.0	8.0	3.7	8.2	6.9	9.1	7.5	9.0	4.5
44	87.0	Niger	9.4	4.3	8.5	6.0	7.2	9.0	7.9	8.5	6.5	6.7	6.0	7.0
45	86.1	Turkmenistan	7.0	4.2	5.2	6.0	7.2	8.0	9.1	7.2	9.7	8.5	8.0	6.0
46	85.4	Guinea-Bissau	7.0	4.9	5.5	7.0	9.3	7.4	7.8	8.0	7.9	7.5	6.5	6.6
47	85.0	Cambodia	7.5	6.5	7.0	8.0	7.2	6.0	7.8	7.5	6.9	6.7	7.5	6.4
47	85.0	Dominican Republic	7.8	7.0	6.5	8.5	8.0	6.0	6.2	8.0	7.1	7.0	7.4	5.5
49	84.6	Papua New Guinea	8.0	2.5	8.0	8.0	9.0	7.0	7.8	8.0	6.1	7.0	6.7	6.5
50	84.5	Belarus	9.0	5.1	5.5	3.5	8.5	6.3	9.0	7.5	7.3	6.8	8.0	8.0
51	84.3	Guatemala	8.7	6.0	7.1	6.7	8.0	7.1	7.5	7.1	7.1	7.5	6.0	5.5
52	84.0	Equatorial Guinea	7.0	2.0	6.7	7.5	9.0	4.0	9.0	8.0	8.5	8.3	8.0	6.0
52	84.0	Iran	6.5	8.7	6.9	5.0	7.5	3.0	8.1	6.1	9.1	8.0	8.8	6.3
54	83.9	Eritrea	8.0	7.2	5.4	6.0	6.0	8.0	8.0	7.3	6.8	7.2	7.5	6.5
55	83.8	Serbia and Montenegro	5.7	8.5	8.6	5.5	8.0	6.5	7.8	5.0	5.6	6.5	8.6	7.5
56	82.9	Bolivia	7.5	4.0	7.0	7.0	8.8	6.2	7.0	7.8	6.7	6.5	8.4	6.0
57	82.5	China	8.5	5.1	8.0	6.6	9.2	4.5	8.5	7.3	9.0	5.5	8.0	2.3
57	82.5	Moldova	7.0	4.7	7.3	8.0	7.5	7.5	7.4	7.0	6.8	5.5	6.8	7.0
59	82.4	Nicaragua	6.5	5.5	6.4	7.1	9.0	8.5	7.3	7.2	5.7	6.5	7.0	5.7
60	82.2	Georgia	6.0	6.8	7.4	6.1	7.0	5.5	7.7	6.3	5.6	8.1	7.1	8.6

Source: The Fund for Peace and Foreign Policy, May/June 2006



Map 16. The Failed States Index-2006

Source: The Fund for Peace and Foreign Policy Magazine, May/June 2006

Appendix Two

State Capacity Index

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
1	Iceland	3.91	4.27	4.68	4.32	4.51	4.93	4.71	4.48
2	Finland	4	4.15	4.56	4.29	4.47	5.03	4.68	4.45
3	Luxembourg	3.9	4.16	4.58	4.52	4.48	4.66	4.67	4.42
4	New Zealand	3.97	4.01	4.55	4.28	4.43	4.88	4.63	4.39
5	Denmark	4.09	3.71	4.65	4.26	4.41	4.88	4.66	4.38
6	Switzerland	3.99	3.94	4.75	4.05	4.48	4.67	4.68	4.37
7	Norway	4.03	4.03	4.47	3.83	4.45	4.61	4.78	4.31
8	Sweden	4.02	3.88	4.42	4.04	4.35	4.7	4.73	4.31
9	Netherlands	3.99	3.65	4.5	4.17	4.28	4.58	4.71	4.27
10	Australia	3.9	3.53	4.45	4.12	4.32	4.52	4.73	4.22
11	Canada	3.88	3.63	4.46	4.07	4.25	4.49	4.72	4.21
12	Singapore	2.37	3.98	4.75	4.37	4.32	4.94	4.51	4.18
13	Austria	3.75	3.68	4.26	3.91	4.26	4.6	4.67	4.16
14	United Kingdom	3.87	3.27	4.35	4.12	4.21	4.56	4.68	4.15
15	Ireland	3.8	3.72	3.98	4.13	4.12	4.11	4.68	4.08
16	Germany	3.88	3.42	3.88	3.79	4.16	4.4	4.63	4.02
17	Belgium	3.85	3.44	4.21	3.75	3.97	4.03	4.71	3.99
18	United States	3.71	2.97	4.3	3.72	4.08	4.33	4.70	3.97
19	Liechtenstein	3.77	3.89	3.98	4.12	3.86	4.19	n/a	3.97
20	Hong Kong	2.71	3.8	3.99	4.39	3.92	4.07	4.52	3.91
21	Malta	3.76	3.96	3.53	3.8	3.73	3.75	4.38	3.84
22	Andorra	3.73	3.85	3.9	3.82	3.93	3.67	n/a	3.82
23	Chile	3.59	3.39	3.77	4.12	3.66	3.94	4.20	3.81
24	France	3.74	3.03	3.92	3.41	3.83	3.94	4.66	3.79
25	Japan	3.48	3.49	3.71	3.54	3.89	3.69	4.69	3.78
26	Spain	3.67	3.04	3.79	3.63	3.62	3.95	4.61	3.76
27	Portugal	3.81	3.56	3.42	3.64	3.66	3.73	4.49	3.76
28	Barbados	3.67	4.02	3.68	3.41	3.71	3.31	4.44	3.75

Rank	Country	Voice and Accountability	Political Stability	Government Effectiveness	Regulatory Quality	Rule of Law	Control of Corruption	HDI Rank	State Capacity Index
29	Bahamas	3.64	3.44	3.77	3.28	3.78	3.86	4.08	3.69
30	Cayman Islands	3.26	4.08	3.89	3.46	3.67	3.67	n/a	3.67
31	Estonia	3.63	3.42	3.49	4.11	3.41	3.32	4.27	3.66
32	Macao	2.61	3.64	3.5	4	3.99	4.15	n/a	3.65
33	Slovenia	3.62	3.49	3.52	3.39	3.43	3.47	4.48	3.63
34	Bermuda	3.49	3.52	3.89	3.48	3.6	3.38	n/a	3.56
35	Monaco	3.41	3.63	3.92	n/a	3.27	n/a	n/a	3.56
36	Cyprus	3.5	2.84	3.52	3.73	3.35	3.3	4.42	3.52
37	Hungary	3.66	3.35	3.18	3.72	3.35	3.15	4.24	3.52
38	Reunion	3.55	3.33	3.53	3.41	3.37	3.52	n/a	3.45
39	Aruba	3.14	3.47	3.34	3.43	3.5	3.67	n/a	3.43
40	Puerto Rico	3.52	3.57	3.55	3.25	3.24	3.38	n/a	3.42
41	Italy	3.56	2.81	3.08	3.47	3.24	3.16	4.60	3.42
42	Greece	3.41	3.03	3.24	3.35	3.25	3.06	4.51	3.41
42	Lithuania	3.47	3.35	3.2	3.66	3.1	2.86	4.21	3.41
44	Martinique	3.18	3.97	3.34	3.3	3.45	3.19	n/a	3.41
45	Czech Republic	3.53	3.34	3.13	3.47	3.19	2.8	4.34	3.40
46	Taiwan	3.45	3.02	3.65	3.79	3.33	3.14	n/a	3.40
47	Costa Rica	3.61	3.48	2.99	3.17	3.07	3.28	4.17	3.40
48	Slovak Republic	3.6	3.15	3.17	3.65	2.99	2.89	4.21	3.38
49	Anguilla	3.24	3.4	3.37	3.46	3.5	3.28	n/a	3.38
50	Antigua And Barbuda	2.98	3.8	2.81	3.23	3.41	3.38	4.00	3.37
51	Virgin Islands (U.S.)	3.16	3.18	3.27	3.46	3.74	3.38	n/a	3.37
52	Latvia	3.46	3.45	3.1	3.52	2.98	2.73	4.12	3.34
53	United Arab Emirates	1.49	3.41	3.7	3.45	3.35	3.73	4.12	3.32
54	Korea, South	3.23	2.95	3.45	3.19	3.17	2.67	4.44	3.30
55	St. Lucia	3.47	3.91	2.69	2.96	3.25	2.79	3.89	3.28
56	Mauritius	3.44	3.41	3.1	2.83	3.34	2.83	3.93	3.27

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
57	St. Vincent And The Grenadines	3.46	3.81	2.73	2.98	3.26	2.84	3.76	3.26
58	Palau	3.71	3.16	2.89	n/a	3.27	n/a	n/a	3.26
59	Dominica	3.63	3.69	2.81	3.03	3.16	2.75	3.72	3.26
60	Botswana	3.23	3.2	3.33	3.46	3.23	3.36	2.95	3.25
61	Netherlands Antilles	2.94	3.16	3.32	3.3	3.25	3.52	n/a	3.25
62	St. Kitts And Nevis	3.25	3.91	2.34	2.94	3.21	2.84	4.22	3.24
63	San Marino	3.68	3.72	2.27	n/a	3.27	n/a	n/a	3.24
64	Poland	3.63	2.85	2.97	3.14	3.01	2.66	4.25	3.22
65	Uruguay	3.5	2.99	3.02	2.8	2.92	3	4.17	3.20
66	Israel	2.96	1.49	3.48	3.19	3.27	3.29	4.54	3.17
67	Grenada	3.35	3.45	2.6	2.87	2.96	3.02	3.73	3.14
68	Brunei	1.39	3.56	3.23	3.58	3.06	2.73	4.34	3.13
69	Oman	1.6	3.26	3.41	2.93	3.48	3.28	3.85	3.12
70	Samoa	3.19	3.39	2.59	2.89	3.12	2.55	3.85	3.08
71	Bahrain	1.77	2.56	3.26	3.21	3.18	3.26	4.22	3.07
72	Qatar	1.71	3.42	3.37	2.34	3.29	3.05	4.17	3.05
73	Malaysia	2.14	2.88	3.49	2.94	3.02	2.79	3.97	3.03
74	Kuwait	2.02	2.79	3.05	2.6	3.15	3.21	4.19	3.00
75	South Africa	3.36	2.26	3.24	2.94	2.82	2.98	3.33	2.99
76	Belize	3.41	3.15	2.66	2.82	2.75	2.43	3.69	2.99
77	French Guiana	2.94	2.98	3.18	2.69	3	3.09	n/a	2.98
78	Trinidad And Tobago	2.99	2.54	2.97	3.11	2.67	2.52	4.01	2.97
79	Cape Verde	3.3	3.17	2.31	2.77	2.76	2.81	3.59	2.96
80	American Samoa	2.94	3.25	2.52	3.12	3.3	2.56	n/a	2.95
81	Croatia	2.96	2.85	2.82	2.69	2.57	2.58	4.15	2.95
82	Bulgaria	3.08	2.63	2.42	3.1	2.55	2.46	3.98	2.89
83	Namibia	2.97	2.96	2.79	2.95	2.72	2.68	3.04	2.87
84	Panama	3.04	2.79	2.51	2.72	2.46	2.44	3.96	2.85

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
85	Tuvalu	3.44	3.36	1.71	3.26	3.26	1.72	n/a	2.79
86	Nauru	3.58	3.16	1.14	n/a	3.27	n/a	n/a	2.79
87	Micronesia	3.51	3.33	2.17	2.54	2.9	2.2	n/a	2.78
88	Mexico	2.86	2.37	2.48	3.05	2.24	2.23	4.01	2.75
89	Suriname	3.1	2.86	2.27	1.98	2.25	2.86	3.90	2.75
90	Thailand	2.74	2.35	2.88	2.49	2.45	2.25	3.84	2.71
91	Jordan	1.82	2.38	2.73	2.63	2.8	2.85	3.75	2.71
92	Brazil	2.84	2.37	2.52	2.69	2.29	2.35	3.88	2.71
93	Romania	2.86	2.72	2.35	2.44	2.32	2.25	3.89	2.69
94	Mongolia	2.95	2.98	2.04	2.68	2.68	1.99	3.34	2.67
95	Tunisia	1.39	2.66	3.07	2.28	2.74	2.79	3.73	2.67
96	Maldives	1.43	3.32	2.97	2.5	1.93	2.62	3.76	2.65
97	Jamaica	3.04	2.22	2.63	2.65	2.18	1.98	3.82	2.65
98	Guam	3.02	3.11	2.91	3.07	3.4	2.95	0.00	2.64
99	Kiribati	3.37	3.27	1.89	2.01	2.75	2.48	n/a	2.63
100	Seychelles	2.46	3.34	2.19	1.29	2.33	2.51	4.27	2.63
101	El Salvador	2.76	2.27	2.28	3.06	2.16	2.11	3.60	2.61
102	Bhutan	1.32	3.34	2.36	2.5	2.77	3.19	2.68	2.59
103	Cook Islands	n/a	n/a	2.31	2.71	3.07	2.26	n/a	2.59
104	Fiji	2.65	2.6	1.93	2.14	2.31	2.36	3.79	2.54
105	Turkey	2.35	1.9	2.51	2.43	2.54	2.27	3.76	2.54
106	Vanuatu	3.18	3.03	1.9	2.17	2.43	1.97	2.85	2.50
107	Guyana	3.12	1.97	2.3	2.36	2.02	2.15	3.60	2.50
108	Tonga	2.15	3.22	1.77	2.07	2.39	1.82	3.94	2.48
109	Ghana	2.89	2.4	2.33	2.22	2.34	2.33	2.84	2.48
110	Lesotho	2.78	2.77	2.17	2.24	2.47	2.45	2.47	2.48
111	Marshall Islands	3.64	3.16	2.04	1.95	2.39	1.66	n/a	2.47
112	Sri Lanka	2.34	1.44	2.23	2.71	2.47	2.34	3.70	2.46

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
113	Argentina	2.99	2.26	2.17	1.69	1.79	2.06	4.27	2.46
114	Dominican Republic	2.77	2.49	2.04	2.22	1.96	2	3.69	2.45
115	Morocco	1.95	2.27	2.47	2.24	2.45	2.48	3.10	2.42
116	Niue	n/a	n/a	2.38	n/a	n/a	n/a	n/a	2.38
117	Peru	2.46	1.82	1.92	2.67	1.87	2.15	3.76	2.38
118	Madagascar	2.57	2.48	2.07	2.6	2.2	2.35	2.35	2.37
119	Macedonia	2.48	1.46	2.33	2.31	2.06	1.98	3.97	2.37
120	Saudi Arabia	0.87	1.9	2.44	2.16	2.7	2.65	3.84	2.37
121	India	2.77	1.69	2.46	1.91	2.41	2.19	2.98	2.34
122	Nicaragua	2.56	2.35	1.79	2.35	1.85	2.16	3.34	2.34
123	Philippines	2.52	1.49	2.27	2.44	1.88	1.95	3.77	2.33
124	Sao Tome And Principe	3.05	2.58	1.61	2.03	1.95	1.84	3.23	2.33
125	Armenia	1.84	1.99	2.16	2.55	1.92	1.97	3.77	2.31
126	Senegal	2.69	2.29	2.37	2.19	2.3	2.1	2.19	2.30
127	Mauritania	1.34	2.76	2.72	2.54	1.88	2.52	2.33	2.30
128	Albania	2.53	1.53	2.14	2.42	1.7	1.78	3.91	2.29
129	Bolivia	2.49	1.85	1.87	2.55	1.95	1.72	3.41	2.26
130	China	0.96	2.43	2.61	2.05	2.03	1.99	3.73	2.26
131	Mali	2.85	2.57	2.21	2.24	2.16	1.98	1.63	2.23
132	Colombia	2.03	0.81	2.32	2.38	1.8	2.34	3.87	2.22
133	Lebanon	1.69	1.67	2.17	2.01	2.18	1.99	3.79	2.21
134	Egypt	1.46	1.78	2.3	1.92	2.48	2.29	3.27	2.21
135	Gambia	1.91	2.88	2.01	2.35	2.18	1.89	2.26	2.21
136	Gabon	1.79	2.49	1.97	2.04	1.99	1.92	3.24	2.21
137	Bosnia-Herzegovina	2.36	1.65	1.96	1.84	1.74	1.96	3.91	2.20
138	Benin	2.8	2.13	2.11	2.01	2.03	2.16	2.11	2.19
139	Honduras	2.48	1.81	1.82	2.17	1.89	1.79	3.36	2.19
140	Russia	1.69	1.65	2.29	1.99	1.8	1.78	3.98	2.17

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
141	Ukraine	1.88	2.23	1.83	2.02	1.67	1.61	3.89	2.16
142	Vietnam	0.96	2.66	2.19	1.93	1.91	1.76	3.46	2.12
143	Ecuador	2.31	1.67	1.65	1.9	1.79	1.75	3.68	2.11
144	Moldova	2.03	1.88	1.77	2.01	1.85	1.64	3.41	2.08
145	Mozambique	2.37	2.35	2.11	2.21	1.9	1.71	1.77	2.06
146	Guatemala	2.11	1.65	1.63	2.43	1.54	1.76	3.25	2.05
147	Tanzania	2.15	2.12	2.13	1.95	2.01	1.93	2.04	2.05
148	Timor, East	2.75	1.88	1.29	2.07	1.9	2.21	2.18	2.04
149	Paraguay	2.27	1.79	1.43	1.9	1.41	1.51	3.76	2.01
150	Burkina Faso	2.12	2.18	1.98	2.24	1.88	2.15	1.51	2.01
151	Indonesia	2.06	1.12	2.14	2.08	1.59	1.6	3.46	2.01
152	Serbia And Montenegro	2.62	1.53	2.29	1.78	1.78	2.02	n/a	2.00
153	Kazakhstan	1.29	2.39	1.87	1.61	1.52	1.4	3.83	1.99
154	Georgia	2.16	1.24	1.7	1.86	1.63	1.59	3.70	1.98
155	Zambia	2.14	2.34	1.66	2.01	1.96	1.76	1.95	1.97
156	Uganda	1.86	1.23	2.07	2.57	1.71	1.79	2.47	1.96
157	Kyrgyz Republic	1.44	1.59	1.67	2.44	1.46	1.58	3.51	1.96
158	Malawi	2	2.17	1.69	1.93	2.21	1.67	1.94	1.94
159	Algeria	1.59	1.08	2.04	1.57	1.77	2.01	3.52	1.94
160	Swaziland	1.05	2.73	1.9	2.14	1.55	1.55	2.60	1.93
161	Papua New Guinea	2.47	1.56	1.49	1.86	1.68	1.6	2.71	1.91
162	Libya	0.71	2.48	1.77	0.98	1.85	1.59	3.97	1.91
163	Cuba	0.62	2.68	2.03	0.69	1.38	1.88	4.05	1.90
164	Cambodia	1.61	1.9	1.63	2.25	1.52	1.53	2.84	1.90
165	Syria	0.78	1.84	1.78	1.29	2.1	1.76	3.55	1.87
166	Venezuela	2.04	1.4	1.54	1.26	1.4	1.56	3.89	1.87
167	Kenya	2.16	1.54	1.69	2.07	1.52	1.61	2.44	1.86
168	Iran	1.14	1.59	1.84	1.17	1.67	1.91	3.66	1.85

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
169	Azerbaijan	1.53	0.98	1.69	1.93	1.65	1.46	3.73	1.85
170	Djibouti	1.65	2.06	1.74	1.74	1.89	1.56	2.27	1.84
171	Rwanda	1.41	1.58	1.94	2.08	1.6	2.14	2.16	1.84
172	Comoros	2.36	2.37	1.05	1.44	1.46	1.36	2.65	1.81
173	Niger	2.38	1.94	1.63	1.87	1.58	1.63	1.46	1.78
174	West Bank/Gaza	1.25	1.17	1.45	1.48	1.55	1.9	3.63	1.78
175	Cameroon	1.32	1.6	1.86	1.79	1.5	1.72	2.51	1.76
176	Belarus	0.96	2.26	1.57	0.72	1.19	1.59	3.95	1.75
177	Solomon Islands	2.6	1.8	0.74	1.03	1.35	1.27	3.12	1.70
178	Nepal	1.5	0.76	1.6	1.9	1.68	1.89	2.52	1.69
179	Bangladesh	1.81	1.26	1.78	1.35	1.64	1.41	2.55	1.69
180	Togo	1.28	1.95	1.19	1.73	1.49	1.58	2.48	1.67
181	Equatorial Guinea	0.79	2.2	1.1	1.72	1.45	0.85	3.52	1.66
182	Tajikistan	1.38	1.31	1.45	1.34	1.32	1.39	3.36	1.65
183	Guinea-Bissau	1.88	1.97	1.25	1.64	1.24	1.79	1.75	1.65
184	Eritrea	0.54	2.36	1.45	1.21	1.72	1.86	2.20	1.62
184	Pakistan	1.19	0.91	1.93	1.47	1.72	1.63	2.49	1.62
186	Guinea	1.38	1.59	1.57	1.56	1.41	1.69	2.13	1.62
187	Yemen	1.51	1.02	1.66	1.46	1.39	1.66	2.41	1.59
188	Sierra Leone	2.01	1.89	1.18	1.48	1.4	1.62	1.37	1.56
189	Congo, Republic Of	1.71	1.09	1.33	1.34	1.32	1.48	2.47	1.53
190	Ethiopia	1.39	1.52	1.54	1.31	1.5	1.65	1.80	1.53
191	Laos	0.95	1.74	1.48	1.26	1.23	1.35	2.67	1.53
192	Chad	1.41	1.3	1.21	1.66	1.35	1.36	1.90	1.46
193	Nigeria	1.85	0.72	1.48	1.24	1.06	1.39	2.33	1.44
194	Angola	1.48	1.55	1.36	1.1	1.17	1.38	1.91	1.42
195	Uzbekistan	0.75	1.13	1.46	0.4	1.2	1.29	3.55	1.40
196	Turkmenistan	0.6	1.58	1.13	0.28	1.07	1.16	3.76	1.37

<i>Rank</i>	<i>Country</i>	<i>Voice and Accountability</i>	<i>Political Stability</i>	<i>Government Effectiveness</i>	<i>Regulatory Quality</i>	<i>Rule of Law</i>	<i>Control of Corruption</i>	<i>HDI Rank</i>	<i>State Capacity Index</i>
197	Cote D'Ivoire	1.04	0.22	1.2	1.67	1.08	1.49	2.00	1.24
198	Central African Republic	1.3	1.07	0.85	1.22	1.06	1.14	1.81	1.21
199	Sudan	0.69	0.42	1.22	1.46	0.91	1.2	2.53	1.20
200	Burundi	1.37	0.46	1.26	1.15	1	1.34	1.70	1.18
201	Zimbabwe	1.02	0.64	1.3	0.35	0.97	1.49	2.46	1.18
202	Haiti	1	0.63	0.6	1.39	0.84	1.01	2.32	1.11
203	Myanmar	0.31	1.29	0.93	0.16	0.88	1.01	2.76	1.05
204	Korea, North	0.45	1.83	0.82	0.45	1.35	1.04	n/a	0.99
205	Congo, Democratic Republic Of	0.86	0.23	1.09	0.7	0.76	1.19	1.83	0.95
206	Liberia	1.26	0.3	0.64	0.67	0.74	1.64	n/a	0.88
207	Afghanistan	1.15	0.47	1.26	0.45	0.69	1.17	n.a	0.87
208	Iraq	0.79	-0.37	0.99	0.71	0.53	1.05	n/a	0.62
209	Somalia	0.92	0.11	0.18	-0.13	0.19	0.92	n/a	0.37

Bibliography

"Africa's Most Wanted; Uganda, Sudan and Congo." *The Economist*, 3 June 2006.

"Aims: Sudan (Darfur)." *Conflict Trends* April (2005).

Annan, Kofi. "Speech to the UN General Assembly." New York, 2002.

Annan, Kofi A. "Two Concepts of Sovereignty." *Economist*, 18 September 1999.

Ayoob, Mohammed. "Humanitarian Intervention and International Society." *Global Governance* 7 (2001): 225-30.

— — —. "Humanitarian Intervention and State Sovereignty." *The International Journal of Human Rights* 6, no. 1 (2002): 81-102.

Bazyler, M. "Re-Examining the Doctrine of Humanitarian Intervention in the Light of the Atrocities in Kampuchea and Ethiopia." *Stanford Journal of International Law* 23 (1987).

Bellamy, Alex J. "Humanitarian Intervention and the Three Traditions." *Global Security* 17, no. 1 (2003).

Bellamy, Alex J. "Ethics and Intervention: The 'Humanitarian Exception' and the Problem of Abuse in the Case of Iraq." *Journal of Peace Research* 41, no. 2 (2004): 131-47.

Blair, Tony. "Doctrine of the International Community." In *The Neocon Reader*, edited by Irwin Stelzer. New York: Grove Press, 2004.

Blau, Peter M. "Critical Remarks on Weber's Theory of Authority." *American Political Science Review* 57 (1963): 305-16.

Bowden, Mark. "Blackhawk Down; an American War Story." *Philadelphia Enquirer*, November 16 1997.

"Bring on the Blue Helmets." *The Economist*, 9 February 2006.

Brown, Bartram S. "Barely Borders." *Harvard International Review* 26, no. 1 (2004): 52-58.

- Brown, Chris. "Universal Human Rights: A Critique." In *Human Rights in Global Politics*, edited by T. Dunne and N. J. Wheeler. Cambridge: Cambridge University Press, 1999.
- Buchanan, Allen. "Reforming the International Law of Humanitarian Intervention." In *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, edited by J.L.Holzgrefe and Robert O. Keohane. Cambridge: Cambridge University Press, 2003.
- Bull, Hedley. *The Anarchical Society*. London: Macmillan Press Ltd, 1995.
- Buzan, Barry. *From International to World Society?* Cambridge: Cambridge University Press, 2004.
- — —. "Rethinking the Solidarist -- Pluralist Debate in English School Theory." Paper presented at the ISA Panel 'Solidarity in Anarchy: Advancing Their New English Schools Agenda', New Orleans, March 2002.
- Byers, Michael, and Simon Chesterman. "Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law." In *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, edited by J. L. Holzgrefe and Robert O. Keohane. New York: Cambridge University Press, 2003.
- Carment, David. "Assessing State Failure: Implications for Theory and Policy." *Third World Quarterly* 24, no. 3 (2003): 407-27.
- Charter of the United Nations (Entered into Force 24 October 1945)*. Available from <http://www.un.org/aboutun/charter/>. (Accessed 18 May 2005).
- Chege, Michael. "Sierra Leone: The State That Came Back from the Dead." *The Washington Quarterly* 25, no. 3 (2002): 147-60.
- Chesterman, Simon. "Humanitarian Intervention in Afghanistan." In *Humanitarian Intervention and International Relations*, edited by Jennifer M Welsh. Oxford: Oxford University Press, 2004.
- — —. *Just War or Just Peace: Humanitarian Intervention and International Law*. Oxford: Oxford University Press, 2001.
- — —. "Reforming the United Nations: Kofi Annan's Legacy Gets a Reality Check." Canberra: Australian Strategic Policy Institute, 2006.

- Clapham, Christopher. "Degrees of Statehood." *Review of International Studies* 24 (1998): 143-57.
- — —. "Sierra Leone: The Global-Local Politics of State Collapse and Attempted Reconstruction." Paper presented at the Failed States Conference, Florence, 10-14 April 2001.
- Cohen, Roberta, and William G. O'Neill. "Last Stand in Sudan." *Bulletin of the Atomic Scientists* 62, no. 2 (2006): 51-58.
- Country Summary: Zimbabwe* Human Rights Watch, 2006. Available from www.hrw.org/english/docs/2006/01/18/zimbab12312.htm. (Accessed 20 April 2006).
- Croft, Stuart. "International Relations and Africa." *African affairs* 96, no. 385 (1997).
- Croke, Kevin. *Decision Time on Darfur* 2006. Available from <http://www.ppionline.org/ndol/print.cfm?contentid=253739>. (Accessed 24 April 2006).
- Cronin, Bruce. "Multilateral Intervention and the International Community." In *International Intervention - Sovereignty Versus Responsibility*, edited by Michael Keren and Donald A. Sylvan. London: Frank Cass & Co. Ltd., 2002.
- Dallaire, Romeo. *Shake Hands with the Devil*. New York: Carroll and Graf Publishers, 2005.
- "Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in the Western Sudan." *Human Rights Watch* 16, no. 6(A) (2004).
- Democratic Republic of the Congo: "Our Brothers Who Helped to Kill Us" -- Economic Exploitation and Human Rights Abuses in the East* Amnesty International, 2003. Available from <http://web.amnesty.org/library/Index/ENGAFR620102003>. (Accessed 25 April 2006).
- Dobbins, James, Seth G Jones, Keith Crane, Andrew Rathmell, Brett Steele, Richard Teltschik, and Anga Timilsina. *The UN's Role in Nation Building: From Congo to Iraq*. Santa Monica: Rand Corporation, 2005.
- Dodd, Mark. "Leaders at Loggerheads." *The Australian*, 31 May 2006.

Dolhenty, Johnathon. *An Overview of Natural Law Theory*. Available from <http://radicalacademy.com/philnaturallaw.htm>. (Accessed 27 May 2005).

Donnelly, Jack. "Human Rights: A New Standard of Civilization." *International Affairs* 74, no. 1 (1998): 1-23.

Dorff, Robert H. "Failed States after 9/11: What Did We Know and What Have We Learned?" *International Studies Perspectives* 6 (2005): 20-34.

"East Pakistan Staff Study by the Secretariat of the International Commission of Jurists." *Review of the International Commission of Jurists* 8 (1972).

"East Timor in Transition 1998 -- 2000: An Australian Policy Challenge." Canberra: Department of Foreign Affairs and Trade, 2001.

Evans, Gareth. *Banishing the Rwanda Nightmare: The Responsibility to Protect* 2004. Available from www.pbs.org/wgbh/pages/frontline/shows/ghosts/etc/protect.html. (Accessed October 30 2005).

— — —. "The Responsibility to Protect and September 11." Paper presented at the UNU/Canadian Government Seminar on the Responsibility to Protect 2006.

— — —. *Responsibility to Protect: Never Say Never Again* 2006. Available from <http://www.crisisgroup.org/home/index.cfm?id=4091>. (Accessed 3 May 2006).

— — —. "The Responsibility to Protect: Unfinished Business." Paper presented at the G8 Summit: Issues and Instruments, Moscow 2006.

Evans, Gareth, and Mohamed Sahnoun. "The Responsibility to Protect." *Foreign Affairs* 81, no. 6 (2002): 99-110.

"The Failed States Index." *Foreign Policy* 149, no. July/August (2005): 56.

Falk, Richard. "Legality to Legitimacy." *Harvard International Review* 26, no. 1 (2004): 40-45.

Farer, Tom J. "Humanitarian Intervention before and after 9/11: Legality and Legitimacy." In *Humanitarian Intervention: Ethical, Legal and Political*

Dilemmas, edited by J.L.Holzgrefe and Robert O. Keohane. Cambridge: Cambridge University Press, 2003.

Finnemore, Martha. *The Purpose of Intervention: Changing Beliefs About the Use of Force*. New York: Cornell University Press, 2003.

Fowler, Michael Ross, and Julie Marie Bunck. *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty*. University Park: Pennsylvania State University Press, 1995.

Fox, James. "Internal Squabbles Cripple Independence." *The Australian*, 26 May 2006.

Franck, T., and N. Rodley. "After Bangladesh: The Law of Humanitarian Intervention by Force." *American Journal of International Law* 67, no. 2 (1973).

Franck, Thomas M. "Interpretation and Change in the Law of Humanitarian Intervention." In *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, edited by J L Holzgrefe and Robert O Keohane. Cambridge: Cambridge University Press, 2003.

Frankena, William K. *Ethics: An Introduction*. Englewood Cliffs: Prentice-Hall, 1973.

Fukuyama, Francis. *State-Building: Governance and World Order in the 21st Century*. Ithaca, New York: Cornell University Press, 2004.

Fullilove, Michael. "The Testament of Solomons: Ramsi and International State Building." Sydney: Lowy Institute, 2006.

Gelb, Leslie H., and Justine A. Rosenthal. "The Rise of Ethics in Foreign Policy." *Foreign Affairs* 82, no. 3 (2003).

Gingrich, Newt, and George Mitchell. "American Interests and UN Reform: Report of the Taskforce on Reform of the United Nations." Washington, D.C.: United States Institute of Peace, 2005.

Glennon, Michael. *Limits of Law, Prerogatives of Power: Interventionism after Kosovo*. New York: Palgrave, 2001.

Goldsmith, Jack L., and Eric A. Posner. *The Limits of International Law*. New York: Oxford University Press, 2005.

- Gros, Jean-Germain. "Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Liberia, Rwanda and Haiti." *Third World Quarterly* 17, no. 3 (1996): 455-71.
- Hamre, John J., and Gordon R. Sullivan. "Toward Postconflict Reconstruction." *The Washington Quarterly* 25, no. 4 (2002): 85-96.
- Harries, Owen. "Morality and Foreign Policy." *CIS Occasional Paper* 94, 29 October 2004.
- Helman, Gerald B., and Steven R. Ratner. "Saving Failed States." *Foreign Policy* 89, no. 4 (1993): 3-21.
- Hensel, Howard M. "Theocentric Natural Law and the Norms of the Global Community." In *Sovereignty and the Global Community: The Quest for Order in the International System*, edited by Howard M. Hensel. Aldershot: Ashgate Publishing, 2004.
- Herbst, Jeffrey. "Responding to State Failure." *International Security* 21, no. 3 (1996): 121-45.
- Herr, Richard. "The Concept of the 'Failed State': A Brobdingnagian View from Lilliput." In *New Zealand in a Globalising World*, edited by Ralph Pettman. Wellington: Format Trade Paperback, 2005.
- Holm, Hans-Henrick. "Failing Failed States: Who Forgets the Forgotten?" *Security Dialogue* 33, no. 4 (2002): 457-71.
- Igiri, Cheryl O, and Princeton N Lyman. "Giving Meaning to 'Never Again': Seeking an Effective Response to the Crisis in Darfur and Beyond." Washington D. C.: Council on Foreign Relations, 2004.
- "Imperatives for an Immediate Change: The African Union Mission in Sudan." *Human Rights Watch* 18, no. 1(A) (2006).
- "In Larger Freedom: Towards Development, Security and Human Rights for All." New York: Report of the Secretary-General of the United Nations for Decision by the Heads of State and Government in September, 2005.
- Investing in Prevention an International Strategy to Manage Risks of Instability and Improve Crisis Response.* A Prime Minister's Strategy Unit Report to the Government, 2005. Available from;

http://www.strategy.gov.uk/downloads/work_areas/countries_at_risk/cris_report.pdf. (Accessed 1 August 2005).

Jackson, Robert. *The Global Covenant: Human Conduct in a World of States*. Oxford: Oxford University Press, 2000.

Jackson, Robert H. *Quasi States: Sovereignty, International Relations, and the Third World*. Cambridge: Press Syndicate of the University of Cambridge, 1990.

— — —. "Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World." *International Organization* 41, no. 4 (1987): 519-49.

— — —. "Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape." *Political Studies* 47, no. 3 (1999): 431-56.

Jackson, Robert H., and Carl G. Rosberg. "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood." *World Politics* 35, no. 1 (1982): 1-24.

Jagger, Bianca. "The Betrayal of Srebrenica." *The European*, 25 September-1 October 1995.

Jentleson, Bruce W. "Tough Love Multilateralism." *The Washington Quarterly* 27, no. 1 (2003): 7-24.

Keohane, Robert O. "Political Authority after Intervention: Gradations in Sovereignty." In *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, edited by J. I. Holzgrefe and Robert O. Keohane, 275-98. Cambridge: Cambridge University Press, 2003.

Knutsen, Torbjorn L. *A History of International Relations Theory*. Manchester and New York: Manchester University Press, 1997.

Krasner, Stephan D. "Sharing Sovereignty: New Institutions for Collapsed and Failing States." *International Security* 29, no. 2 (2004): 85-120.

Krasner, Stephen D. "Compromising Westphalia." *International Security* 20, no. 3 (1995): 115- 51.

— — —. "Rethinking the Sovereign State Model." *Review of International Studies* 27 (2001): 17-42.

- — —. "Sovereignty and Intervention." In *Beyond Westphalia? State Sovereignty and International Intervention*, edited by Gene M. Lyons and Michael Mastanduno. Baltimore: The John Hopkins University Press, 1995.
- — —. *Sovereignty: Organised Hypocrisy* (Electronic Book) Princeton University Press, 1999 [cited 25 April 2003]. Available from <http://www.amazon.com>.
- Krisch, Nico. "Legality, Morality, and the Dilemma of Humanitarian Intervention after Kosovo." *European Journal of International Law* 13, no. 1 (2002): 323-35.
- Kuper, L. *The Prevention of Genocide*. New Haven: Yale University Press, 1985.
- Kurlantzick, Josh. "Paradise Lost: The U.N. Success Story That Wasn't." *Washington Post*, 4 June 2006.
- Lacey, Marc. "The Lesson of Somalia: Just a Humpty Dumpty Story." *New York Times*, 26 November 2003.
- "Leave None to Tell the Story: Genocide in Rwanda." Human Rights Watch, 1999.
- Lemarchand, Rene. "The Democratic Republic of the Congo: From Failure to Potential Reconstruction." In *State Failure and State Weakness in a Time of Terror*, edited by Robert I. Rotberg. Washington, DC: Brookings Institution Press, 2003.
- — —. "Patterns of State Collapse and Reconstruction in Central Africa: Reflections on the Crisis in the Great Lakes." *Africa Studies Quarterly* 1, no. 3 (1997).
- Little, Richard. "Neorealism and the English School: A Methodological, Ontological and Theoretical Reassessment." *European Journal of International Relations* 1, no. 1 (1995).
- MacFarlane, S. Neil. *Intervention in Contemporary World Politics, Adelphi Paper 350*. Oxford: Oxford University Press, 2002.
- Malone, David. "Haiti and the International Community: A Case Study." *Survival* 39, no. 2 (1997): 126-46.

- Martin, Ian. "International Intervention in East Timor." In *Humanitarian Intervention and International Relations*, edited by Jennifer M. Welsh. Oxford: Oxford University Press, 2004.
- McDonald, Hamish. "Islanders Still Unable to Think as a Nation." *Sydney Morning Herald*, 20 April 2006.
- Meredith, Martin. *The Fate of Africa: From the Hopes of Freedom to the Heart of Despair*. New York: Public Affairs, 2005.
- Mozaffari, Mehdi. "The Transformationalist Perspective and the Rise of a Global Standard of Civilization." *International Relations of the Asia-Pacific* 1 (2001): 247-64.
- Nardin, Terry. "The Moral Basis of Humanitarian Intervention." *Ethics and International Affairs* 16, no. 1 (2002): 57-70.
- "No End in Sight to Darfur's Misery." *The Economist*, 8 July 2006.
- O'Connell, Mary Ellen. "The UN, NATO, and International Law after Kosovo." *Human Rights Quarterly* 22, no. 1 (2000): 57-89.
- O'Neill, William G., and Violette Cassis. "Protecting Two Million Internally Displaced: The Successors and Shortcomings of the African Union in Darfur." Washington D. C.: The Brookings Institution -- University of Bern, 2005.
- Osiander, Andreas. *The States System of Europe, 1640-1990: Peacemaking and the Conditions of International Society*. New York: Oxford University Press, 1994.
- Patton, Christopher. "The Butcher of Harare." *Wall Street Journal*, 12 October 2005.
- Perlez, Jane. "East Timor's Capital Spirals into Violence, Despite U.N. Peace Keepers." *New York Times*, 28 May 2006.
- Philpott, Daniel. "A Brief History of Sovereignty." *Journal of International Affairs* 48, no. 2 (1995): 353-69.
- — —. "Usurping the Sovereignty of Sovereignty." *World Politics* 53, no. 2 (2001): 297-324.

Polgreen, Lydia, and Joel Brinkley. "Sudan and Largest Rebel Faction Sign Pact to End Carnage." *New York Times*, 4 May 2006.

Post-Conflict Reconstruction: The Role of the World Bank. Washington, D.C.: World Bank, 1998.

Potter, Donald W. "State Responsibility, Sovereignty, and Failed States." Paper presented at the Australasian Political Studies Association Conference, University of Adelaide, 29 September-1 October 2004.

Power, Samantha. *"a Problem from Hell" America and the Age of Genocide*. London: Flamingo, 2003.

"Problem Child: Timor-Leste." *The Economist*, 3 June 2006.

Quinlan, Michael. "Justifying War." *Australian Journal of International Affairs* 58, no. 1 (2004): 7-15.

Ramsbotham, Oliver. "Human Intervention 1990-5: A Need to Reconceptualise." *Review of International Studies* 23 (1997): 445-68.

"A Region in Flames." *The Economist*, 3 July 2003.

Reisman, W. Michael. "Haiti and the Validity of International Action." *American Journal of International Law* 89, no. 1 (1995): 82-84.

Reno, William. "War and the Failure of Peacekeeping in Sierra Leone." In *Stockholm International Peace Research Institute Yearbook 2001: Armaments, Disarmament, and International Security*. Oxford: Oxford University Press, 2001.

"The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty." Ottawa: International Development Research Centre for ICISS, 2001.

"The Responsibility to Protect: Research, Bibliography, Background." International Commission on Intervention and State Sovereignty, 2000.

"The Responsibility to Protect: Research, Bibliography, Background, Supplementary Volume to Report of the International Commission on Intervention and State Sovereignty." Ottawa: International Development Research Centre for ICISS, 2001.

- Rice, Xan, and Jan Raath. "Zimbabwe's Decent into Misery." *The Australian*, 5 December 2005.
- Rieff, David. *At the Point of a Gun: Democratic Dreams and Armed Intervention*. New York: Simon & Schuster, 2005.
- Rotberg, Robert I. "Failed States, Collapsed States, Weak States: Causes and Indicators." In *State Failure and State Weakness in a Time of Terror*, edited by Robert I. Rotberg. Washington D.C.: Brookings Institution Press, 2003.
- Ruggie, J. "Continuity and Transformation in the World Polity: Towards a Neorealist Synthesis." *World Politics* 35 (1983): 261-85.
- Scheffer, David. "Toward a Modern Doctrine of Humanitarian Intervention." *University of Toledo Law Review* 23 (1992): 253-93.
- Schram, Olav, and Davor Vidas. "Effectiveness and Legitimacy of International Regimes." In *Governing the Antarctic: The Effectiveness and Legitimacy of the Antarctic Treaty System*, edited by Olav Schram and Davor Vidas. Cambridge: Cambridge University Press, 1996.
- Simma, Bruno. *NATO, the UN, and the Use of Force: Legal Aspects* 1999 [cited 1 10]. Available from <http://www.ejil.org/journal/Vol10/No1/ab1.html>.
- Smith, Michael J. "Humanitarian Intervention: An Overview of the Ethical Issues." *Ethics and International Affairs* 12 (1998): 63-79.
- Sofield, Trevor H. B. "Solomon Islands: Unity in Diversity - the End of a Dream." In *Australia's Arc of Instability*, edited by Dennis Rumley, Vivian Louis Forbes and Christopher Griffin. Dordrecht: Springer, 2006.
- Sorensen, Georg. *Sovereignty, Security, and State Failure* University of Aarhus, Denmark, 2001. Available from http://www.ippu.edu/failed_states/2001/paperSorensen.pdf. (Accessed 3 March 2003).
- — —. "Sovereignty: Change and Continuity in a Fundamental Institution." *Political Studies* 47, no. 3 (1999): 590-604.
- Stein, Mark S. "Unauthorized Humanitarian Intervention." *Social Philosophy & Policy* 21, no. 1 (2004): 14-38.

- Tesón, Fernando. "Defending International Law." Paper presented at the ASIL Centennial Discussion on a Just World Under Law: Why Obey International Law?, University of Baltimore School of Law 2006.
- — —. *Humanitarian Intervention: An Inquiry into Law and Morality*. Dobbs Ferry: Transnational Publishers, 1988.
- — —. *A Philosophy of International Law*. Boulder, Colorado: Westview Press, 1998.
- Tesón, Fernando R. "The Liberal Case for Humanitarian Intervention." In *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*., edited by J. L. Holzgrefe, and Robert Keohane, 93-129. New York:: Cambridge University Press, 2003.
- Thielke, Thilo. *Robert Mugabe's Old Boys' Network* Der Spiegel, 2005.
Available from
www.service.spiegel.de/cache/international/spiegel/0,1518,druck-3.
(Accessed 15 January 2005).
- Thomas, Caroline. *New States, Sovereignty and Intervention*. Aldershot: Gower Publishing Company Ltd, 1985.
- Thomson, Janice E. "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research." *International Studies Quarterly* 39 (1995): 213-33.
- Tibaijuka, Anna. "Report on the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina." New York: United Nations, 2005.
- "An Uphill Struggle." *The Economist*, 24 June 2006.
- Vincent, R. J., and P. Wilson. "Beyond Non-Intervention." In *Political Theory, International Relations and the Ethics of Intervention*, edited by I. Forbes and S. Hoffman. Basingstoke: Macmillan, 1993.
- Waal, Alex de. "Tragedy in Darfur." *Boston Review*, no. October/November (2004).
- Wainwright, Elsin. "How Is Ramsi Faring? Progress, Challenges, and Lessons Learned." Canberra: Australian Strategic Policy Institute, 2005.

- — —. "Our Failing Neighbour - Australia and the Future of the Solomon Islands." Canberra: Australian Strategic Policy Institute, 2003.
- Waltz, Kenneth. *Theory of International Politics*. New York: Random House, 1979.
- Walzer, Michael. "The Argument About Humanitarian Intervention." *Dissent* 49, no. 1 (2002): 29-38.
- — —. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. London: Allen Lane, 1978.
- Weisburd, A. Mark. *Humanitarian Intervention 1945-89 American Diplomacy*, 2001. Available from http://www.unc.edu/depts/diplomat/archives_roll/2001_07-09/hum_intervention/hum_04_weisburd.html. (Accessed 31 October 2005).
- Weiss, Thomas G. "Triage: Humanitarian Interventions in a New Era." *World Policy Journal* 11, no. 1 (1994): 59-68.
- Weiss, Thomas G., and Don Hubert. *The Responsibility to Protect: Research, Bibliography, Background*. International Commission on Intervention and State Sovereignty, 2001. Available from <http://www.iciss-ciise.gc.ca/menu-e.asp>. (Accessed 2 November 2002).
- Welsh, Jennifer M. "From Right to Responsibility: Humanitarian Intervention and International Society." *Global Governance* 8, no. 4 (2002): 503-22.
- — —. *Humanitarian Intervention and International Relations*. Oxford: Oxford University Press, 2004.
- Wheeler, Nicholas J. *Saving Strangers: Humanitarian Intervention in International Society*. Oxford: Oxford University Press, 2000.
- Wight, Martin. *International Theory: The Three Traditions*. Leicester: Leicester University Press, 1991.
- World, Bank. *The State in a Changing World*. Oxford: Oxford University Press, 1997.
- The Worst of the Worst: The World's Most Repressive Societies* Freedom House, 2006 [cited 28 April. Available from www.freedomhouse.org.

- Wucker, Michele. "Haiti: So Many Missteps." *World Policy Journal*, no. Spring (2004): 41-49.
- Young, Crawford. "Zaire: The Shattered Illusion of the Integral State." *Journal of Modern African Studies* 32 (1994).
